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THE CITY OF SUMMERSVILLE, WEST VIRGINIA  
WATER AND SEWER SYSTEM REVENUE BONDS  
(WEST VIRGINIA INFRASTRUCTURE AND JOB DEVELOPMENT COUNCIL)  
SERIES 1998 A

CLOSING DOCUMENT LIST

Closing Date January 6, 1998

1. Certified copy of Chapter 8, Article 20, of the Code of West Virginia, 1931, as amended
2. Certified copy of the Charter of The City of Summersville
3. Certified copy of Bond Ordinance enacted by City Council on August 11, 1997
4. Affidavit of Publication of Abstract of Ordinance and Notice of Public Hearing
5. Minutes of City Council Meeting of July <sup>28</sup>~~21~~, 1997
6. Minutes of City Council Meeting of August 11, 1997
7. Minutes of City Council Meeting of August 25, 1997
8. Certified copy of Supplemental Resolution adopted January 2, 1998
9. Minutes of City Council Meeting of January 2, 1998
10. Loan Agreement dated January 6, 1998
11. Municipal Bond Commission New Issue Form
12. Cross-Receipt for Bonds and Bond Proceeds
13. Rate Ordinance
14. PSC Certificate of Convenience and Necessity
15. General Certificate
16. Direction to Authenticate and Deliver Bonds
17. Engineer's Certificate

18. Registrar's Agreement
19. Certificate of Registration
20. Registrar's Certificate
21. Opinion of Vaughan & Withrow, Bond Counsel, regarding the validity of the Bonds
22. Opinion of Gregory Tucker, City Attorney
23. Title Opinion from Greg Tucker
24. Opinion of John Blair regarding debt service coverage and parity requirement for bonds
25. Specimen Bond
26. Approval Letter from Infrastructure Council
27. Consent from WDA for Parity Bonds
28. Consent from RUS for Parity Bonds
29. Grant Agreement with WV Infrastructure and Job Development Council
30. Evidence of Small Cities Block Grant
31. Agreement with Craigs ville Public Service District and Nicholas County Commission

# State of West Virginia



## Certificate

*I, Ken Hechler, Secretary of State of the  
State of West Virginia, hereby certify that*

THIS IS A TRUE COPY OF CHAPTER 8, ARTICLE 20 OF THE WEST VIRGINIA  
CODE AND CHAPTER 8, ARTICLE 20 OF THE 1997 CUMULATIVE  
SUPPLEMENT TO THE WEST VIRGINIA CODE AS INDICATED BY THE  
RECORDS OF THIS OFFICE.



*Given under my hand and the  
Great Seal of the State of  
West Virginia on this  
Ninth \_\_\_\_\_ day of  
January 19 98*

*Ken Hechler  
Secretary of State*

## ARTICLE 20.

## COMBINED WATERWORKS AND SEWERAGE SYSTEMS.

## Part I. Combined Waterworks and Sewerage Systems Authorized; Definitions.

Sec. 8-20-1. Acquisition and operation of combined waterworks and sewerage systems; extension beyond corporate limits; definitions.

8-20-1a. Cooperation with other governmental units.

8-20-1b. Severance of combined system.

## Part II. Right of Eminent Domain.

8-20-2. Right of eminent domain; limitations.

## Part III. Revenue Bond Financing.

8-20-3. Ordinance describing project; contents.

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8-20-6. Bonds payable solely from revenues; not to constitute municipal indebtedness.

8-20-7. Lien of bondholders.

8-20-8. Covenants with bondholders.

8-20-9. Operating contract.

8-20-10. Power and authority of municipality to enact ordinances and make rules or charges; change in rates or charges; notice of delinquency; failure to cure delinquency; delinquent rates or charges as liens; civil action for recovery thereof; deferral of filing fees and costs in magistrate court action; limitations with respect to foreclosure.

8-20-11. Discontinuance of water service for nonpayment of rates or charges.

8-20-12. Use of revenues; sinking fund.

8-20-13. System of accounts; audit.

8-20-14. Repair and maintenance of municipal sewerage system outside corporate limits.

8-20-15. Protection and enforcement of rights of bondholders, etc.; receiver-ship.

8-20-16. Grants, loans and advances.

8-20-17. Additional and alternative method for constructing, etc., and financing combined waterworks and sewerage system; cumulative authority.

8-20-18. Alternative procedure for acquisition, construction, etc., of combined waterworks and sewerage system.

8-20-19. Article to be liberally construed.

## Part IV. Grants, Loans and Advances; Cumulative Authority.

## Part V. Operation by Board; Construction.

**Revision of chapter.** — See note under the same catchline at the beginning of this chapter.

**Legislative intent.** — It appears clear that the legislature recognized the need for municipal utility systems; however, it did not wish the municipality to become generally obligated

for the building or acquisition of the system. Financing is provided for primarily by revenue bonds, and bondholders are assured of a safe investment through the collection of sufficient user charges to service the bonds and maintain the assets of the system. Op. Atty Gen., April 3, 1979.

## PART I. COMBINED WATERWORKS AND SEWERAGE SYSTEMS AUTHORIZED; DEFINITIONS.

## § 8-20-1. Acquisition and operation of combined waterworks and sewerage systems; extension beyond corporate limits; definitions.

Any municipality may acquire, construct, establish and equip and thereafter repair, maintain and operate a combined waterworks and sewerage system either wholly within or partly within and partly without the corporate limits thereof, under the provisions of this article, and any municipality owning and operating either a waterworks or a sewerage system, but not both, may acquire, construct, establish and equip the waterworks or sewerage system which it does not then own and operate, and in either of such cases such municipality may provide by ordinance that when such waterworks or sewerage system, or both, shall have been acquired, constructed, established and equipped, the same shall thereafter be owned, repaired, maintained and operated as a combined undertaking under the provisions of this article, and any municipality already owning and operating an existing waterworks system and an existing sewerage system may by ordinance combine the same into a single undertaking under the provisions of this article.

Any municipality which has combined its waterworks and sewerage system under the provisions of this article, or pursuant to provisions of any other law, may hereafter construct extensions, additions, betterments and improvements to either the waterworks system or the sewerage system of said combined waterworks and sewerage system, or both, and may finance the acquisition, construction, establishment and equipment of any such waterworks or sewerage system, or both, or the construction of extensions, additions, betterments and improvements to either the waterworks system or the sewerage system of such combined waterworks and sewerage system, or both, by the issuance of revenue bonds under the provisions of this article.

Notwithstanding the provisions of any other law or charter to the contrary, any such municipality may serve and supply the area included within twenty miles outside its corporate limits with the water or sewer services and facilities, or both, of its combined waterworks and sewerage system. Provided, That such water or sewer services and facilities shall not be served or supplied within the corporate limits of any other municipality without the consent of the governing body of such other municipality.

When used in this article, the term "waterworks system" shall be construed to mean and include a waterworks system in its entirety or any integral part thereof, including mains, hydrants, meters, valves, standpipes, storage tanks, pump tanks, pumping stations, intakes, wells, impounding reservoirs, pumps, machinery, purification plants, softening apparatus, and all other facilities necessary, appropriate, useful, convenient or incidental in connection with or to a water supply system; the term "sewerage system" shall be construed to mean and include any or all of the following: A sewage treatment plant or plants, collecting, intercepting and outlet sewers, lateral sewers, drains, force

mains, conduits, pumping stations and all other appurtenances, extensions, additions and improvements necessary, appropriate, useful, convenient or incidental for the collection, treatment and disposal in a sanitary manner of sewage and industrial wastes; and the term "combined waterworks and sewerage system" shall be construed to mean and include a waterworks and sewerage system, which a municipality determines by ordinance to operate in combination. (1939, c. 98, §§ 1, 2; 1947, c. 112; 1955, c. 131; 1969, c. 86.)

**Plant expansion or repair.** — Considering the general grant of authority provided by § 8-12-5(2) there is no language in this article that would prevent a municipality from granting funds to its combined waterworks and sewerage system to be used for plant expansion or repair. What this section does say, however, is that if the municipality wishes to finance any of the activities governed by the article, it must do so by revenue bonds or by loans or advances under § 8-20-16. Op. Atty Gen., April 3, 1979.

**Power of eminent domain.** — Municipalities that operate sewer systems may exercise the power of eminent domain. When such a municipality is obliged to exercise that power in furtherance of its public responsibility, but refuses to do so, the public service commission may require the exercise of the power by appropriate order. *Broadmoor/Timberline Apts. v. Public Serv. Comm'n*, 376 S.E.2d 593 (W. Va. 1988).

**§ 8-20-1a. Cooperation with other governmental units.**

In carrying out any lawful purpose prescribed by this article, any municipality may, in the exercise of its powers, duties and responsibilities, cooperate or join with the State of West Virginia or any political subdivision, agency, board, commission, office or department thereof, however designated, or with the United States of America or any agency or department thereof. (1976, c. 83.)

**§ 8-20-1b. Severance of combined system.**

Any municipality which has combined its waterworks and sewerage system under the provisions of this article, or pursuant to provisions of any other law, may hereafter sever said combined waterworks and sewerage system if the following conditions are met:

(a) An ordinance is enacted by the governing body of the municipality severing the combined waterworks and sewerage system into a separate waterworks system and a separate sewerage system.

(b) If revenue bonds or notes or other obligations with a lien on or pledge of the revenues of said combined waterworks and sewerage system, or any part thereof, are outstanding, then the municipality must provide in said ordinance (i) that the severance of the combined waterworks and sewerage system is not effective until all such outstanding revenue bonds or notes or other obligations with a lien on or pledge of the revenues of the system, or any part thereof, are paid and (ii) the method for paying said outstanding revenue bonds or notes or other obligations. For the purposes of this section, said municipality may provide for payment of said outstanding revenue bonds or notes or other obligations by:

(1) Depositing moneys and funds with the West Virginia municipal bond commission or in escrow with a corporate trustee, which may be a trust company or bank having powers of a trust company within or without the state of West Virginia selected by the issuer to pay interest when due and to pay principal when due, whether at maturity or earlier redemption;

(2) Depositing securities with the municipal bond commission or said escrow trustee, the principal of and earnings on which will provide moneys sufficient to pay interest when due and to pay principal when due, whether at maturity or earlier redemption; or

(3) Depositing with the municipal bond commission or said escrow trustee any combination of the foregoing sufficient to pay interest when due and to pay principal when due, whether at maturity or earlier redemption.

(c) If the combined waterworks and sewerage system is under the supervision and control of a separate committee, board or commission, then the governing body of the municipality must provide for the dissolution of such committee, board or commission, and the creation of such other committees, boards or commissions as may be required by law. (1986, c. 118.)

PART II. RIGHT OF EMINENT DOMAIN.

**§ 8-20-2. Right of eminent domain; limitations.**

For the purpose of acquiring, constructing, establishing or extending any waterworks system or any sewerage system, or a combined waterworks and sewerage system, or for the purpose of constructing any additions, betterments or improvements to any such waterworks or sewerage system, or a combined waterworks and sewerage system, or for the purpose of acquiring any property necessary, appropriate, useful, convenient or incidental for or to any waterworks or sewerage system, or combined waterworks and sewerage system, under the provisions of this article, the municipality shall have the right of eminent domain as provided in chapter fifty-four [§ 54-1-1 et seq.] of this code: Provided, That such right of eminent domain for the acquisition of a complete privately owned waterworks system shall not be exercised without prior approval of the public service commission, and in no event shall any municipality construct, establish or extend beyond the corporate limits of said municipality a municipal waterworks system or a combined waterworks and sewerage system under the provisions of this article to supply service in competition with an existing privately or municipally owned waterworks system or combined waterworks and sewerage system in such municipality or within the proposed extension of such system, unless a certificate of public convenience and necessity therefor shall have been issued by the public service commission. (1947, c. 112; 1969, c. 86.)

PART III. REVENUE BOND FINANCING.

§ 8-20-3. Ordinance describing project; contents.

The governing body of any municipality availing itself of the provisions of this article shall adopt an ordinance describing in a general way the contemplated project. If it is intended to include in the combined waterworks and sewerage system any existing waterworks system or any existing sewerage system, or both, such ordinance shall provide that it or they be so included in such combined system and shall describe in a general way such existing waterworks or sewerage system or both to be included in the combined waterworks and sewerage system. Such ordinance shall state the means provided for refunding any obligations unpaid and outstanding payable solely from the revenues of any such waterworks or sewerage system, or both. Such ordinance shall determine the period of usefulness of the contemplated project. If it is intended to acquire, construct, establish and equip a combined waterworks and sewerage system or any part thereof, or to construct extensions, additions, betterments and improvements to either the waterworks system or the sewerage system of said combined waterworks and sewerage system, or both, the ordinance shall describe in a general way the works or property or system to be acquired, constructed, established or equipped or the extensions, additions, betterments and improvements to be constructed. Such ordinance shall fix the amount of revenue bonds proposed to be issued, the interest rate or rates, and any other details in connection with such bonds deemed advisable. Such ordinance may state that the bonds, or such ones thereof as may be specified, shall, to the extent and in the manner prescribed, be subordinated and be junior in standing, with respect to principal and interest and the security thereof, to such other bonds as are designated in the ordinance. (1939, c. 98, § 4; 1947, c. 112; 1949, c. 91; 1969, c. 86.)

§ 8-20-4. Publication of abstract of ordinance and notice; hearing.

After the ordinance for any project under the provisions of this article has been adopted, an abstract of the ordinance, determined by the governing body to contain sufficient information as to give notice of the contents of such ordinance, together with the following described notice, shall be published as a Class II legal advertisement in compliance with the provisions of article three [§ 59-3-1 et seq.], chapter fifty-nine of this code, and the publication area for such publication shall be such municipality. The notice to be published with said abstract of the ordinance shall state that said ordinance has been adopted, that the municipality contemplates the issuance of the bonds described in the ordinance, that any person interested may appear before the governing body upon a certain date, which shall not be less than ten days subsequent to the date of the first publication of such abstract and notice and which shall not be prior to the date of the last publication of such abstract and notice, and present protests and that a certified copy of the ordinance is on file

with the governing body for review by interested parties during the office hours of the governing body. At such hearing all protests and suggestions shall be heard and the governing body shall take such action as it shall deem proper in the premises. Provided, That if at such hearing written protest is filed by thirty percent or more of the freeholders of the municipality, then the governing body of said municipality shall not take further action unless four fifths of the qualified members of said governing body assent thereto. (1939, c. 98, § 5; 1947, c. 112; 1967, c. 105; 1969, c. 86; 1971, c. 103; 1981, 1st Ex. Sess., c. 2.)

§ 8-20-5. Amount, negotiability and execution of bonds; re-fund of outstanding obligations or securities by sale or exchange of bonds.

For the purpose of defraying the cost of acquisition, construction, establishment or equipment of any such waterworks or sewerage system, or a combined waterworks and sewerage system, and for the purpose of paying the cost of constructing any extensions, additions, betterments or improvements to either the waterworks or sewerage system of said combined waterworks and sewerage system, or both, any such municipality may issue revenue bonds under the provisions of this article. All such bonds may be authorized, issued and sold pursuant to ordinance in installments at different times or an entire issue or series may be sold at one time. Such bonds shall bear interest at a rate not to exceed twelve percent per annum, payable at such times, and shall mature within the period of usefulness of the project involved, to be determined by the governing body and in any event within a period of not more than forty years. Such bonds may be in such denomination or denominations, may be in such form, either coupon or registered, may carry such registration and conversion privileges, may be executed in such manner, may be payable in such medium of payment, at such place or places, may be subject to such terms of redemption, with or without a premium, may be declared to become due before the maturity date thereof, may provide for the replacement of mutilated, destroyed, stolen or lost bonds, may be authenticated in such manner and upon compliance with such conditions, and may contain such other terms and covenants, as may be provided by ordinance of the governing body of the municipality. Notwithstanding the form or tenor thereof, and in the absence of an express recital on the face thereof that the bond is nonnegotiable, all such bonds shall at all times be, and shall be treated as, negotiable instruments for all purposes. Said bonds and the interest thereon, together with all properties and facilities of said municipality owned or used in connection with said combined waterworks or sewerage system, and all the moneys, revenues and other income of such municipality derived from such combined waterworks and sewerage system shall be exempt from all taxation by this State or any county, municipality, political subdivision or agency thereof. Such bonds may be sold in such manner as the governing body shall determine. If any such bonds shall be issued to bear interest at a rate of twelve percent per annum, the price at which they may be sold shall be such that the

interest cost of such municipality of the proceeds of such bonds shall not exceed thirteen percent per annum computed to maturity according to the standard table of bond values. If the governing body of the municipality determines to sell any revenue bonds of such combined waterworks and sewerage system for refunding purposes, the proceeds of such bonds shall be deposited at the place of payment of the bonds, obligations or securities being refunded thereby. In case any officer whose signature appears on such bonds or coupons attached thereto shall cease to be such officer before the delivery of the bonds to the purchaser, such signature shall nevertheless be valid and sufficient for all purposes, with the same effect as if he had remained in office until the delivery of the bonds. All signatures on the bonds or coupons and the corporate seal may be mechanically reproduced if authorized in the ordinance authorizing the issuance of the bonds. Such bonds shall have all the qualities of negotiable instruments under the laws of this State.

Whenever a waterworks and sewerage system is included in a combined waterworks and sewerage system under the provisions of this article and there are unpaid and outstanding revenue bonds or any other obligations or securities previously issued which are payable solely from the revenues of such waterworks or such sewerage system or any part thereof, such outstanding bonds, obligations or securities may be refunded by the issuance and sale or exchange therefor of revenue bonds to be issued under the provisions of this article. Whenever any outstanding bonds, obligations or securities previously issued which are payable solely from the revenues of any waterworks or sewerage system included in a combined waterworks and sewerage system under the provisions of this article are refunded and the refunding is to be accomplished by exchange, such outstanding bonds, obligations or securities shall be surrendered and exchanged for revenue bonds of such combined waterworks and sewerage system of a total principal amount which shall not be more and may be less than the principal amount of the bonds, obligations or securities surrendered and exchanged plus the interest to accrue thereon to the date of surrender and exchange, and if the refunding is to be accomplished through the sale of revenue bonds of such combined waterworks and sewerage system the total principal amount of such revenue bonds which may be sold for refunding purposes shall not exceed the principal amount of the bonds, obligations or securities being refunded plus the interest to accrue thereon to the retirement date or the next succeeding interest payment date, whichever date may be earlier. Provision may be made that each bond to be exchanged for refunding bonds shall be kept intact and shall not be canceled or destroyed until the refunding bonds, and interest thereon, have been finally paid and discharged; but each such bond shall be stamped with a legend to the effect that the same has been refunded pursuant to the provisions of this article. (1939, c. 98, § 3; 1947, c. 112; 1957, c. 123; 1969, c. 86; 1970, c. 7; 1980, c. 33; 1981, 1st Ex. Sess., c. 2.)

**§ 8-20-6. Bonds payable solely from revenues; not to constitute municipal indebtedness.**

Bonds issued under the provisions of this article shall be payable solely from the revenues derived from the combined waterworks and sewerage system, and such bonds shall not in any event constitute an indebtedness of such municipality within the meaning of any constitutional or statutory provision or limitation and it shall be plainly stated on the face of each bond that the same has been issued under the provisions of this article, and that it does not constitute an indebtedness of such municipality within any constitutional or statutory provision or limitation. The ordinance authorizing the issuance of the bonds may contain such covenants and restrictions upon the issuance of additional revenue bonds thereafter as may be deemed necessary or advisable for the assurance of payment of the bonds thereby authorized and as may thereafter be issued. (1939, c. 98, § 6; 1969, c. 86.)

**§ 8-20-7. Lien of bondholders.**

There shall be and there is hereby created and granted a statutory mortgage lien upon such combined waterworks and sewerage system which shall exist in favor of the holder of bonds hereby authorized to be issued, and each of them, and to and in favor of the holder of the coupons attached to said bonds, and such combined waterworks and sewerage system shall remain subject to such statutory mortgage lien until payment in full of the principal of and interest upon said bonds.

Any municipality in acquiring an existing waterworks system may provide that payment therefor shall be made by issuing revenue bonds and delivering the same at such prices as may be agreed upon within the limitations prescribed in section five [§ 8-20-5] hereof. Any revenue bonds so issued in payment for such an existing waterworks system shall for all purposes be regarded as partaking of the nature of and as being secured by a purchase money mortgage upon the property so acquired; and the holders thereof shall have, in addition to any other remedies and rights prescribed by this article, such remedies and rights as may now or hereafter exist in law in the case of purchase money mortgages. (1939, c. 98, § 8; 1947, c. 112; 1969, c. 86.)

**§ 8-20-8. Covenants with bondholders.**

Any ordinance authorizing the issuance of bonds hereunder, or any trust indenture with any banking institution or trust company, within or without the State, for the security of said bonds, which any such municipality is hereby empowered and authorized to enter into and execute, may contain covenants with the holders of such bonds as to:

- (a) The purpose or purposes to which the proceeds of sale of such bonds or the revenues derived from said combined waterworks and sewerage system may be applied, and the securing, use and disposition thereof, including, if deemed desirable, the appointment of a trustee or depository for any of such funds;

(b) The pledging of all or any part of the revenues derived from the ownership, control or operation of such combined waterworks and sewerage system, including any part thereof heretofore or hereafter acquired, constructed, established, extended, equipped, added to, bettered or improved or derived from any other sources, to the payment of the principal of or interest thereon of bonds issued hereunder and for such reserve or other funds as may be deemed necessary or desirable;

(c) The fixing, establishing and collecting of such rates or charges for the use of the services and facilities of the combined waterworks and sewerage system, including the parts thereof heretofore or hereafter acquired, constructed, established, extended, equipped, added to, bettered or improved and the revision of same from time to time, as will always provide revenues at least sufficient to provide for all expenses of repair, maintenance and operation of such combined waterworks and sewerage system, the payment of the principal of and interest upon all bonds or other obligations payable from the revenues of such combined waterworks and sewerage system, and all reserve and other funds required by the terms of the ordinance authorizing the issuance of such bonds;

(d) The transfer from the general funds of the municipality to the account or accounts of the combined waterworks and sewerage system of an amount equal to the cost of furnishing the municipality or any of its departments, boards or agencies with the services and facilities of such combined waterworks and sewerage system;

(e) Limitations or restrictions upon the issuance of additional bonds or other obligations payable from the revenues of such combined waterworks and sewerage system, and the rank or priority, as to lien and source and security for payment from the revenues of such combined waterworks and sewerage system, between bonds payable from such revenues;

(f) The manner and terms upon which all bonds and other obligations issued hereunder may be declared immediately due and payable upon the happening of a default in the payment of the principal of or interest thereon, or in the performance of any covenant or agreement with bondholders, and the manner and terms upon which such defaults may be declared cured and the acceleration of the maturity of such bonds rescinded and repealed;

(g) Budgets for the annual repair, maintenance and operation of such combined waterworks and sewerage system and restrictions and limitations upon expenditures for such purposes, and the manner of adoption, modification, repeal or amendment thereof, including the approval of such budgets by consulting engineers designated by holders of bonds issued hereunder;

(h) The amounts of insurance to be maintained upon such combined waterworks and sewerage system, or any part thereof, and the use and disposition of the proceeds of any insurance; and

(i) The keeping of books of account, relating to such undertaking and the audit and inspection thereof, and the furnishing to the holders of bonds issued hereunder or their representatives, reports prepared, certified or approved by accountants designated or approved by the holders of bonds issued hereunder.

Any such ordinance or trust indenture may also contain such other additional covenants as shall be deemed necessary or desirable for the security of the holders of bonds issued hereunder, notwithstanding that such other covenants are not expressly enumerated above, it being the intention hereof to grant to municipalities plenary power and authority to make any and all covenants or agreements necessary in order to secure greater marketability for bonds issued hereunder as fully and to the same extent as such covenants or agreements could be made by a private corporation rendering similar services and facilities and to grant to municipalities full and complete power and authority to enter into any contracts, covenants or agreements with holders of bonds issued hereunder not inconsistent with the Constitution of this State. (1955, c. 131; 1969, c. 86.)

**§ 8-20-9. Operating contract.**

Any such municipality may enter into contracts or agreements with any persons for (1) the repair, maintenance and operation and management of the facilities and properties of said combined waterworks and sewerage system, or any part thereof, or (2) the collection and disbursement of the income and revenues thereof, or for both (1) and (2), for such period of time and under such terms and conditions as shall be agreed upon between such municipality and such persons. Any such municipality shall have plenary power and authority to provide in the ordinance authorizing the issuance of bonds hereunder, or in any trust indenture securing such bonds, that such contracts or agreements shall be valid and binding upon the municipality as long as any of said bonds, or interest thereon, is outstanding and unpaid. (1955, c. 131; 1969, c. 86.)

**§ 8-20-10. Power and authority of municipality to enact ordinances and make rules and regulations and fix rates or charges; change in rates or charges; notice of delinquency; failure to cure delinquency; delinquent rates or charges as liens; civil action for recovery thereof; deferral of filing fees and costs in magistrate court action; limitations with respect to foreclosure.**

(a) The governing body of any municipality availing itself of the provisions of this article shall have plenary power and authority to make, enact and enforce all needful rules and regulations for the repair, maintenance and operation and management of the combined waterworks and sewerage system of such municipality and for the use thereof, and shall also have plenary power and authority to make, enact and enforce all needful rules and regulations and ordinances for the care and protection of any such system, which may be conducive to the preservation of the public health, comfort and convenience and to rendering the water supply of such municipality pure and the sewerage harmless insofar as it is reasonably possible so to do, and any such

municipality shall have plenary power and authority to charge the users for the use and service of such combined waterworks and sewerage system and to establish rates or charges for such purpose. Separate rates or charges may be fixed for the water and sewer services respectively or combined rates or charges for the combined water and sewer services. Such rates or charges, whether separate or combined, shall be sufficient at all times to pay the cost of repair, maintenance and operation of the combined waterworks and sewerage system, provide an adequate reserve fund and adequate depreciation fund and pay the principal of and interest upon all revenue bonds issued under this article. Rates or charges shall be established, revised and maintained by ordinance and become payable as the governing body may determine by ordinance, and such rates or charges shall be changed from time to time as needed, consistent with the provisions of this article.

(b) Whenever any rates and charges for services or facilities furnished remain unpaid for a period of thirty days after the same become due and payable, the property and the owner thereof, as well as the user of the services and facilities provided shall be delinquent and the owner, user and property shall be held liable at law until such time as all such rates and charges are fully paid: Provided, That in the event the user is a tenant, the property owner shall be given notice of any said delinquency by certified mail, return receipt requested, and the user shall be given such notice by first-class mail: Provided, however, That failure of the user to cure the delinquency within a thirty-day period after receipt of such notice shall constitute grounds to terminate user's lease of the premises concerned.

(c) All rates or charges for water service and sewer service whenever delinquent, as provided by ordinance of the municipality, shall be liens of equal dignity, rank and priority with the lien on such premises of state, county, school and municipal taxes for the amount thereof upon the real property served, and the municipality shall have plenary power and authority from time to time to enforce such lien in a civil action to recover the money due for such services rendered plus court fees and costs and a reasonable attorney's fee: Provided, That a municipality shall have exhausted all remedies available in magistrate courts against such delinquent users before it may proceed in a civil action against the owner.

(d) Municipalities are hereby granted a deferral of filing fees or other fees and costs incidental to the bringing and maintenance of an action in magistrate court for the collection of the delinquent rates and charges. If the municipality collects the delinquent account, plus fees and costs, from its customer or other responsible party, the municipality shall pay to the magistrate court the filing fees or other fees and costs which were previously deferred.

(e) No municipality may foreclose upon the premises served by it for delinquent rates, fees or charges for which a lien is authorized by this section except through the bringing and maintenance of a civil action for such purpose brought in the circuit court of the county wherein the municipality lies. In every such action, the court shall be required to make a finding based upon the evidence and facts presented that the municipality had exhausted all other remedies for the collection of debts with respect to such delinquencies

prior to the bringing of such action. In no event shall foreclosure procedures be instituted by any municipality or on its behalf unless such delinquency had been in existence or continued for a period of two years from the date of the first such delinquency for which foreclosure is being sought. (1939, c. 98, § 7; 1947, c. 112; 1969, c. 86; 1989, c. 133.)

Effect of amendment of 1969. — The second paragraphs as (a) and (c), respectively, amendment designated the former first and added (b), (d) and (e), and rewrote (c).

**§ 8-20-11. Discontinuance of water service for nonpayment of rates or charges.**

Any such municipality shall also have plenary power and authority, and may covenant with the holders of any bonds issued hereunder, to shut off and discontinue the supplying of the water service of said combined waterworks and sewerage system for the nonpayment of the rates or charges for said water service or sewer service, or both. (1955, c. 133; 1969, c. 86.)

**§ 8-20-12. Use of revenues; sinking fund.**

All revenues derived from the operation of any combined waterworks and sewerage system under the provisions of this article shall be set aside as collected and used only for the purpose of paying the cost of repairing, maintaining and operating such system, providing an adequate reserve fund, an adequate depreciation fund, and paying the principal of and interest upon the revenue bonds issued by the municipality under the provisions of this article. The ordinance pursuant to which any such bonds are issued shall pledge the revenues derived from the combined waterworks and sewerage system to the purposes aforesaid and shall definitely fix and determine the amount of revenues which shall be necessary and set apart in a special fund for the bond requirements. The amounts as and when so set apart into said special fund for the bond requirements shall be remitted to the West Virginia municipal bond commission to be retained and paid out by said commission consistent with the provisions of this article and the ordinance pursuant to which such bonds have been issued: Provided, That payments of principal of and interest on any bonds owned by the United States of America or any agency or department thereof may be made by the municipality directly to the United States of America or said agency or department thereof. (1939, c. 98, § 9; 1969, c. 86; 1986, c. 118.)

**§ 8-20-13. System of accounts; audit.**

Any municipality operating a combined waterworks and sewerage system under the provisions of this article shall set up and maintain a proper system of accounts in accordance with the requirements of the public service commission, showing the amount of revenues received from such combined waterworks and sewerage system and the application of the same. At least once each year such municipality shall cause such accounts to be properly audited,

and a report of such audit shall be open to the public for inspection at all reasonable times. (1939, c. 98, § 10; 1969, c. 86.)

**§ 8-20-14. Repair and maintenance of municipal sewerage system outside corporate limits.**

Whenever a municipality collects rates or charges from users of any part of a sewerage system located outside the corporate limits of such municipality for sewerage service rendered to such users, pursuant to the provisions of this article or other act or law, such municipality shall be responsible for the repair and maintenance of such sewerage system and the county court [county commission] of the county or counties in which such sewerage system is located shall not be liable or responsible for the repair and maintenance of such sewerage system. (1957, c. 127; 1969, c. 86.)

*Editor's notes.* — The bracketed words were inserted by the editor. See W. Va. Const., art. IX, § 9.

**§ 8-20-15. Protection and enforcement of rights of bondholders, etc.; receivership.**

Any holder of any bonds issued under the provisions of this article or of any coupons representing interest accrued thereon may by civil action, mandamus or other proper proceeding enforce the statutory mortgage lien created and granted in section seven [§ 8-20-7] of this article, protect and enforce any and all rights granted hereunder or under any such ordinance or trust indenture, and may enforce and compel performance of all duties required by the provisions of this article or by any such ordinance or trust indenture to be performed by the municipality or by the governing body or any officer, including the making and collecting of reasonable and sufficient rates or charges for services rendered by the combined waterworks and sewerage system. If there be default in the payment of the principal of or interest upon any of such bonds, or of both principal and interest, any court having jurisdiction shall appoint a receiver to administer said combined waterworks and sewerage system on behalf of the municipality, and the bondholders or trustee, or both, with power to charge and collect rates or charges sufficient to provide for the retirement of the bonds and pay the interest thereon, and for the payment of the repair, maintenance and operation expenses, and such receiver shall apply the revenues in conformity with the provisions of this article and the ordinance pursuant to which such bonds have been issued or trust indenture, or both. (1939, c. 98, § 8; 1947, c. 112; 1969, c. 86.)

PART IV. GRANTS, LOANS AND ADVANCES; CUMULATIVE AUTHORITY.

**§ 8-20-16. Grants, loans and advances.**

Any municipality is hereby empowered and authorized to accept loans or grants and procure loans or temporary advances evidenced by notes or other negotiable instruments issued in the manner, and subject to the privileges and limitations, set forth with respect to bonds authorized to be issued under the provisions of this article, for the purpose of paying part or all of the cost of acquisition, construction, establishment, extension or equipment of combined waterworks and sewerage systems and the construction of additions, betterments and improvements thereto, and for the other purposes herein authorized, from any authorized agency of the state or from the United States of America or any federal or public agency or department of the United States or any private agency, corporation or individual, which loans or temporary advances, including the interest thereon, may be repaid out of the proceeds of bonds authorized to be issued under the provisions of this article, the revenues of the said combined waterworks and sewerage system or grants to the municipality from any agency of the state or from the United States of America or any federal or public agency or department of the United States or any private agency, corporation or individual or from any combination of such sources of payment, and to enter into the necessary contracts and agreements to carry out the purposes hereof with any agency of the state, the United States of America or any federal or public agency or department of the United States, or with any private agency, corporation or individual. Any other provisions of this article notwithstanding, interest on any such loans or temporary advances may be paid from the proceeds thereof until the maturity of such notes or other negotiable instrument.

In no event shall any such loan or temporary advance be a general obligation of the municipality and such loans or temporary advances, including the interest thereon, shall be paid solely from the sources specified in this section. (1961, c. 106; 1969, c. 86; 1981, 1st Ex. Sess., c. 2; 1986, c. 118.)

**§ 8-20-17. Additional and alternative method for constructing, etc., and financing combined waterworks and sewerage system; cumulative authority.**

This article shall, without reference to any other statute or charter provision, be deemed full authority for the acquisition, construction, establishment, extension, equipment, additions, betterment, improvement, repair, maintenance and operation of or to the combined waterworks and sewerage system herein provided for and for the issuance and sale of the bonds by this article authorized, and shall be construed as an additional and alternative method therefor and for the financing thereof, and no petition, referendum or election or other or further proceeding with respect to any such undertaking or to the issuance or sale of bonds under this article and no publication of any resolution, ordinance, notice or proceeding relating to any such undertaking or to

the issuance or sale of such bonds shall be required, except as prescribed by this article, any provisions of other statutes of the State to the contrary notwithstanding. Provided, That all functions, powers and duties of the state department of health and the division of water resources of the department of natural resources shall remain unaffected by this article.

This article shall be construed as cumulative authority for any undertaking herein authorized, and shall not be construed to repeal any existing laws with respect thereto. (1933, Ex. Sess., c. 26, § 13; 1969, c. 86.)

PART V. OPERATION BY BOARD; CONSTRUCTION.

§ 8-20-18. Alternative procedure for acquisition, construction, etc., of combined waterworks and sewerage system.

(a) As an alternative to the procedure hereinabove provided, any municipality is hereby empowered and authorized to acquire, construct, establish, extend, equip, repair, maintain and operate a combined waterworks and sewerage system or to construct, maintain and operate additions, betterments and improvements thereto, whether acquired, constructed, established, extended or equipped under the provisions of this article or not, and to collect the revenues therefrom for the services rendered thereby, through the supervision and control of a committee, by whatever name called, composed of all or of a portion of the governing body, or of a board or commission appointed by such governing body, as may be provided by the governing body, and if such alternative is followed, said committee, board or commission shall have and be limited to all the powers, authority and duties granted to and imposed upon a board as provided in article sixteen [§ 8-16-1 et seq.] of this chapter.

(b) In the event that the waterworks or sewerage system or both are in existence prior to the creation of the combined waterworks and sewerage system, and the waterworks or sewerage system or both are supervised and controlled by a committee, board or commission, and the alternative provided for in subsection (a) of this section is to be followed with respect to the supervision and control of the combined waterworks and sewerage system, the governing body may by ordinance, after the creation of the combined waterworks and sewerage system, provide (1) the manner of and procedure for transferring such supervision and control from each such separate committee, board or commission to the committee, board or commission which is supervising and controlling the combined waterworks and sewerage system, or (2) the manner of and procedure for combining each such separate committee, board or commission into one committee, board or commission and transferring thereto such supervision and control as aforesaid. (1961, c. 104; 1969, c. 86.)

§ 8-20-19. Article to be liberally construed.

This article is necessary for the public health, safety and welfare and shall be liberally construed to effectuate its purposes. (1933, Ex. Sess., c. 26, § 14; 1969, c. 86.)

ARTICLE 20A.

NEIGHBORHOOD REHABILITATION.

- Sec. 8-20A-1. Legislative findings and purpose.
- 8-20A-2. Definitions.
- 8-20A-3. Neighborhood rehabilitation fund.
- Sec. 8-20A-4. Inspection and technical assistance.
- 8-20A-5. Deferral of repayment.

§ 8-20A-1. Legislative findings and purpose.

(a) The legislature hereby finds and declares that the lack of safe, decent, sanitary and affordable owner-occupied and rental dwellings is one of the most serious problems facing this State and that a major contributing factor to this problem is the deterioration of the State's existing housing stock; that these deteriorating dwellings exist in both the urban and rural areas of the State; that a disproportionate number of owners of these deteriorating dwellings are older, less affluent and otherwise less able to afford the expense of the remodeling, repairing and rehabilitating of their residences necessary to maintain such residences in a sanitary, safe and decent condition; that because of the lack of acceptable loan collateral, the age of their residences and the location and age of the neighborhoods in which their residences are located, many of such owners have not been able to borrow funds necessary to effect such remodeling, repair and rehabilitation; and that some of such homeowners who have been able to obtain funds for such purposes have been able to do so only upon rates of interest and upon other terms and conditions which are particularly onerous and disadvantageous to such owners.

(b) The legislature further finds and declares that the assistance authorized in this article will provide, and will encourage private lenders to provide, to such owners, more readily and at rates of interest and upon other terms and conditions significantly more favorable to such owners, the loans necessary to finance the cost of such remodeling, repair and rehabilitation.

(c) The legislature further finds and declares that the powers granted to municipalities and counties in this article will enable them to maximize the use of federal programs for housing rehabilitation.

(d) The legislature further finds and declares that it is manifestly in the public interest to foster the pride, self-respect and esteem incident to home ownership and to encourage and assist in the maintenance of residences, both owner occupied and rental, in a safe, decent and sanitary condition; that without the assistance authorized in this article, there will be continued deterioration of housing with the resultant proliferation of slums, higher crime rates and general decline in civic pride, public spirit and the quality of life.

# WEST VIRGINIA CODE

ANNOTATED

VOLUME 3

1990 Replacement

1997 Supplement

Including Acts passed during the 1997 Regular and First  
Extraordinary Sessions

Prepared by the Editorial Staff of the Publishers

*Under the Supervision of*

RICHARD W. WALTER, JR.  
PETER R. ROANE  
RUTH P. KNIGHT  
LYNN P. SEUFFERT

Place in pocket of corresponding bound volume

MICHIE

CHARLOTTESVILLE, VIRGINIA  
1997

§ 8-19-19 MUNICIPAL CORPORATIONS

all functions, powers and duties of the state division of health shall remain unaffected by this article.

This article shall be construed as cumulative authority for any undertaking herein authorized, and shall not be construed to repeal any existing laws with respect thereto. (1933, Ex. Sess., c. 26, § 13; 1969, c. 86; 1978, c. 72; 1986, 1st Ex. Sess., c. 18; 1990, c. 141.)

PART VI. OPERATION BY BOARD; CONSTRUCTION.

§ 8-19-19. Alternative procedure for acquisition, construction or improvement of waterworks or electric power system.

As an alternative to the procedures hereinabove provided, any municipality or county commission is hereby empowered and authorized to acquire, construct, establish, extend, equip, repair, maintain and operate a waterworks or an electric power system or to construct, maintain and operate additions, betterments and improvements to an existing waterworks system or an existing electric power system, whether acquired, constructed, established, extended or equipped under the provisions of this article or not, and to collect the revenues therefrom for the services rendered thereby, through the supervision and control of a committee, by whatever name called, composed of all or a portion of the governing body, or of a board or commission appointed by such governing body, as may be provided by the governing body, and if such alternative is followed, said committee, board or commission shall have and be limited to all the powers, authority and duties granted to and imposed upon a board as provided in article sixteen [§ 8-16-1 et seq.] of this chapter. (1961, c. 104; 1969, c. 86; 1978, c. 72; 1990, c. 141.)

§ 8-19-20. Article to be liberally construed.

This article is necessary for the public health, safety and welfare and shall be liberally construed to effectuate its purposes. (1933, Ex. Sess., c. 26, § 14; 1969, c. 86; 1990, c. 141.)

§ 8-19-21. Specifications for water mains and water service pipes.

Considering the importance of public fire protection, any state or local government, public service district, public or private utility which installs, constructs, maintains, or upgrades water mains, shall ensure that all new mains specifically intended to provide fire protection are supplied by mains which are not less than six inches in diameter. A permit or other written approval shall be obtained from the department of health and human resources for each hydrant or group of hydrants installed in compliance with section nine [§ 16-1-9], article one, chapter sixteen of the West Virginia code as amended. That all newly constructed water distribution systems

COMBINED WATERWORKS AND SEWERAGE SYSTEMS § 8-20-10

transferred to a public or private utility shall have mains at least six inches in diameter where fire flows are desired or required by the public or private utility. Provided, however, That the utility providing service has sufficient hydraulic capacity as determined by the department of health and human resources. (1994, c. 31.)

ARTICLE 20.

COMBINED WATERWORKS AND SEWERAGE SYSTEMS.

Part III. Revenue Bond Financing.

Sec. 8-20-10. Power and authority of municipality to enact ordinances and make rules and regulations and fix rates or charges; change in rates or charges; failure to cure delinquency; delinquent rates or charges as liens; civil action for recovery thereof; deferral of filing fees and costs in magis-

trate court action; limitations with respect to foreclosure. Part IV. Grants, Loans and Advances; Cumulative Authority.

8-20-17. Additional and alternative method for constructing, etc., and financing combined waterworks and sewerage system; cumulative authority.

PART III. REVENUE BOND FINANCING.

§ 8-20-10. Power and authority of municipality to enact ordinances and make rules and regulations and fix rates or charges; change in rates or charges; failure to cure delinquency; delinquent rates or charges as liens; civil action for recovery thereof; deferral of filing fees and costs in magistrate court action; limitations with respect to foreclosure.

(a) The governing body of any municipality availing itself of the provisions of this article shall have plenary power and authority to make, enact and enforce all needful rules and regulations for the repair, maintenance and operation and management of the combined waterworks and sewerage system of such municipality and for the use thereof, and shall also have plenary power and authority to make, enact and enforce all needful rules and regulations and ordinances for the care and protection of any such system, which may be conducive to the preservation of the public health, comfort and convenience and to rendering the water supply of such municipality pure and the sewerage harmless insofar as it is reasonably possible so to do, and any such municipality shall have plenary power and authority to charge the users for the use and service of such combined waterworks and sewerage system and to establish rates or charges for such purpose. Separate rates or charges may be fixed for the water and sewer services respectively or combined rates or charges for the combined water and sewer services. Such rates or charges, whether separate or combined, shall be sufficient at all times to pay the cost of

repair, maintenance and operation of the combined waterworks and sewerage system, provide an adequate reserve fund and adequate depreciation fund and pay the principal of and interest upon all revenue bonds issued under this article. Rates or charges shall be established, revised and maintained by ordinance and become payable as the governing body may determine by ordinance, and such rates or charges shall be changed from time to time as needed, consistent with the provisions of this article.

(b) Whenever any rates and charges for services or facilities furnished remain unpaid for a period of thirty days after the same become due and payable, the user of the services and facilities provided shall be delinquent and the user shall be held liable at law until such time as all such rates and charges are fully paid.

(c) All rates or charges for water service and sewer service whenever delinquent, as provided by ordinance of the municipality, shall be liens of equal dignity, rank and priority with the lien on such premises of state, county, school and municipal taxes for the amount thereof upon the real property served, and the municipality shall have plenary power and authority from time to time to enforce such lien in a civil action to recover the money due for such services rendered plus court fees and costs and a reasonable attorney's fee: Provided, That an owner of real property may not be held liable for the delinquent rates or charges for services or facilities of a tenant, nor shall any lien attach to real property for the reason of delinquent rates or charges for services or facilities of a tenant of such real property, unless the owner has contracted directly with the municipality to purchase such services or facilities.

(d) Municipalities are hereby granted a deferral of filing fees or other fees and costs incidental to the bringing and maintenance of an action in magistrate court for the collection of the delinquent rates and charges. If the municipality collects the delinquent account, plus fees and costs, from its customer or other responsible party, the municipality shall pay to the magistrate court the filing fees or other fees and costs which were previously deferred.

(e) No municipality may foreclose upon the premises served by it for delinquent rates, fees or charges for which a lien is authorized by this section except through the bringing and maintenance of a civil action for such purpose brought in the circuit court of the county wherein the municipality lies. In every such action, the court shall be required to make a finding based upon the evidence and facts presented that the municipality had exhausted all other remedies for the collection of debts with respect to such delinquencies prior to the bringing of such action. In no event shall foreclosure procedures be instituted by any municipality or on its behalf unless such delinquency had been in existence or continued for a period of two years from the date of the first such delinquency for which foreclosure is being sought. (1939, c. 98, § 7; 1947, c. 112; 1969, c. 86; 1989, c. 133; 1990, c. 140.)

*Effect of amendment of 1990.* — The user and property shall, and deleted the amendment, in (b), deleted "property and the former two provisos at the end; and in (c), owner of, as well as the" preceding "user" and "the user shall" for "the owner, and deleted the proviso.

PART IV. GRANTS, LOANS AND ADVANCES; CUMULATIVE AUTHORITY.

**§ 8-20-17. Additional and alternative method for constructing, etc., and financing combined waterworks and sewerage system; cumulative authority.**

This article is, without reference to any other statute or charter provision, full authority for the acquisition, construction, establishment, extension, equipment, additions, betterment, improvement, repair, maintenance and operation of or to the combined waterworks and sewerage system herein provided for and for the issuance and sale of the bonds by this article authorized, and is an additional and alternative method thereof and for the financing thereof, and no petition, referendum or election or other or further proceeding with respect to any such undertaking or to the issuance or sale of bonds under this article and no publication of any resolution, ordinance, notice or proceeding relating to any such undertaking or to the issuance or sale of such bonds is required, except as prescribed by this article, any provisions of other statutes of the state to the contrary notwithstanding: Provided, That all functions, powers and duties of the bureau of public health and the division of environmental protection remain unaffected by this article.

This article is cumulative authority for any undertaking herein authorized, and does not repeal any existing laws with respect thereto. (1933, Ex. Sess., c. 26, § 13; 1969, c. 86; 1994, c. 61.)

*Effect of amendment of 1994.* — The health and "division of environmental protection", in the first paragraph, substituted "division of water resources", and "bureau of public health" for "department of made other stylistic changes.

ARTICLE 21.

BOARD OF PARK AND RECREATION COMMISSIONERS.

PART II. POWERS.

**§ 8-21-9. Authority to take title to real and personal property; conveyances of real property to board by public bodies; sales and conveyances of real property by board; execution of deeds.**

*W. Va. Law Review.* — Lorenson, "Rethinking the West Virginia Municipal Code of 1969," 97 W. Va. L. Rev. 653 (1995).

AN ACT

(Chap. 184.) To incorporate the town of Summersville in  
the County of Nicholas.

PASSED MARCH 20th, 1860.

1. Be it enacted by the General Assembly that the town of Summersville in the County of Nicholas shall be and the same is hereby made a town corporate by the name of the town of Summersville; and by that name shall have and exercise the powers conferred upon towns by and be subject to the provisions of, the fifty fourth Chapter of the Code of Virginia so far as the provisions of said Chapter are not in conflict with the provisions of this act.

2. The boundary of said town shall be as follows: viz, including all of the lots heretofore laid off in said town and to include the Methodist Church South and running from J. A. Alderson's office up to the turnpike road and including said road to a lot of four acres of land owned by Levesey and with his line to James A. Remley's lot and with Remley's line to include his lot and from the lower corner of same a straight line to the Kentucky road, and with the said road to the turnpike road, and with same to the lot given by Austin Groves for a School House and Temperance Hall, and the running to include said lot and V. Levesay's lot of one acre, and thence down said turnpike road to Eagle's Shop.

3. The officers of said town shall consist of a Mayor, five Councilmen and a Sergeant who shall have the powers and perform the duties of a Constable within the limits of said corporation who shall be elected by the white male inhabitants of the said town of the age of twenty one years, and upwards who have been residents thereof twelve months out of the year immediately preceding the election. The said officers shall be elected on the first Monday after

I, Ron E. Hancock, City Recorder of the City of Summersville do hereby certify that this is a true copy of the Charter of the City of Summersville this 2<sup>nd</sup> day of January, 1998.

Signed: Ron E. Hancock  
Ron E. Hancock

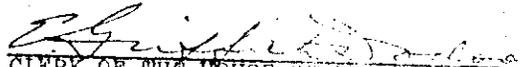
in April annually and the Mayor and Councilmen shall continue in authority until the second Saturday in April in each successive year and until others shall be qualified in their stead and no longer. The Mayor of said town shall be and is hereby constituted "ex officio" justice of the peace within the limits of the said town.

4. V. Levisay, James A. Remley, N. A. Patterson, J. W. Switzer and V. B. Hammon are hereby authorized to hold an election agreeably to the charter aforesaid, for said officers on the second Saturday in April next at Nicholas Court House, any three of whom may act and should they fail to hold an election on that day it shall be their duty to appoint a day and give ten days notice.

5. The fifty fourth Chapter of the Code of Virginia shall be held and deemed a part of this Act so far as the provisions of said Chapter are not in conflict with the provisions of this Act.

6. This Act shall be in force from its passage and shall at all times be subject to alteration or appeal at the pleasure of the General Assembly.

The above is a true copy of an act of the General Assembly of the Commonwealth of Virginia for the session of 1859/60, entitled AN ACT to incorporate the town of Summersville in the County of Nicholas, passed March 20th, 1860.

  
CLERK OF THE HOUSE OF DELEGATES AND  
KEEPER OF THE ROLLS OF THE STATE.

Richmond, Virginia.

March 28, 1949.

Summersville, Nicholas County, West Virginia.

The "TOWN OF SUMMERSVILLE" was established in the year 1824.

It was first INCORPORATED as "TOWN OF SUMMERSVILLE" by Acts of Assembly of the Commonwealth of Virginia on the 20th day of March, 1860.

It was re-incorporated as "TOWN OF SUMMERSVILLE" on the 12th day of August, 1897, by the Circuit Court of Nicholas County, West Virginia, by ORDER duly entered on said date, under and pursuant to the General Statutes of the State of West Virginia, providing therefor.

(Data by O. C. Lewis)

CITY OF SUMMERSVILLE

ORDINANCE

AN ORDINANCE AMENDING AND SUPPLEMENTING AN ORDINANCE ENTITLED "ORDINANCE AUTHORIZING THE ACQUISITION, CONSTRUCTION, IMPROVEMENT AND BETTERMENT TO THE PUBLIC WATERWORKS AND SEWERAGE SYSTEM FACILITIES OF THE CITY OF SUMMERSVILLE AND THE FINANCING OF THE COSTS, NOT OTHERWISE PROVIDED, THEREOF THROUGH THE ISSUANCE BY THE CITY OF NOT MORE THAN \$900,000.00 IN AGGREGATE PRINCIPAL AMOUNT OF WATER AND SEWER REVENUE BONDS, SERIES 1991 A, NOT MORE THAN \$100,000.00 IN AGGREGATE PRINCIPAL AMOUNT OF WATER AND SEWER REVENUE BONDS, SERIES 1991 B, AND NOT MORE THAN \$900,000.00 INTERIM CONSTRUCTION FINANCING, CONSISTING OF NOTES OR A LINE OF CREDIT EVIDENCED BY NOTES OR ANY COMBINATION OF THE FOREGOING; PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SUCH BONDS AND NOTES; AUTHORIZING EXECUTION AND DELIEVERY OF A TRUST INDENTURE SECURING THE NOTES; APPROVING AND RATIFYING A LOAN AGREEMENT AND SUPPLEMENTAL LOAN AGREEMENT RELATING TO SUCH BONDS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND NOTES AND ADOPTING OTHER PROVISIONS RELATING THERETO" BY AUTHORIZING THE ACQUISITION, CONSTRUCTION, IMPROVEMENT AND BETTERMENT TO THE PUBLIC WATER WATERWORKS AND SEWERAGE SYSTEM FACILITIES OF THE CITY OF SUMMERSVILLE AND THE FINANCING CERTAIN COSTS THEREOF THROUGH THE ISSUANCE BY THE CITY OF NOT MORE THAN \$700,000.00 IN AGGREGATE PRINCIPAL AMOUNT OF WATER AND SEWER SYSTEM REVENUE BONDS, SERIES 1997 A, PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SUCH BONDS; APPROVING AND RATIFYING A LOAN AGREEMENT RELATING TO THE SERIES 1997 A BONDS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATING THERETO.

BE IT ORDAINED AND ENACTED BY THE COUNCIL OF THE CITY OF SUMMERSVILLE:

I, Ron E Hancock, Recorder for the City of Summersville, do hereby certify that this ordinance is a true copy on this 2<sup>nd</sup> day of January, 1998.

Signed: Ron E Hancock  
Ron E. Hancock

## ARTICLE I

### STATUTORY AUTHORITY, FINDINGS AND DEFINITIONS

Section 1.01. Authority for this Ordinance. This Ordinance (together with any ordinance, order or resolution supplemental hereto or amendatory hereof, the "Bond Legislation") is adopted pursuant to the provisions of Chapter 8, Article 20 and Chapter 31, Article 15A of the West Virginia Code of 1931, as amended (the "Act"), and other applicable provisions of law.

Section 1.02. Findings. It is hereby found, determined and declared that:

A. The City of Summersville (the "Issuer") is a municipal corporation and political subdivision of the State of West Virginia in Nicholas County of said State.

B. The Issuer presently owns and operates a public combined water and sewer system. However, it is deemed necessary and desirable for the health and welfare of the inhabitants of the Issuer and its environs that there be designed and constructed certain additions, betterments and improvements for the existing waterworks facilities of the Issuer consisting of the extension of water lines to the Glade Creek Area and surrounding communities, by constructing 4,700 lineal feet of 16" waterline, 24,200 lineal feet of 8" waterline, 9,100 lineal feet of 6" waterline and 4,100 lineal feet of 2" waterline, together with valves, hydrants, air releases, service lines, meter settings and all appurtenant facilities (the "Project") which constitute properties for the distribution of water (the existing water and sewer system facilities of the Issuer, the Project and any further additions thereto or extensions thereof is herein called the "System") at an estimated cost of \$1,711,000.00, in accordance with the plans and specifications prepared by the Consulting Engineers, which plans and specifications have been approved by the Issuer.

C. The Issuer intends to issue its Water and Sewer System Revenue Bonds, Series 1997 A, in order to pay a portion of the costs of the Project, to provide funds to reimburse itself for costs of Project previously incurred and paid by the Issuer and to pay the costs of issuance of the Series 1997 A Bonds

D. The estimated revenues to be derived in each year after completion of the Project from the operation of the System will be sufficient to pay all the costs of the operation and maintenance of said System, the principal of and interest on the Bonds and all Sinking Fund, Reserve Account and other payments provided for herein, all as such terms are hereinafter defined.

E. It is deemed necessary for the Issuer to issue its Water and Sewer System Revenue Bonds Series 1997 A in the total aggregate principal amount of not more than \$700,000.00 (the "Series 1997 A Bonds"). The proceeds of the Series 1997 A Bonds will used to finance certain costs for the construction and acquisition of the Project and to reimburse the Issuer for certain costs already incurred. Said costs shall be deemed to include the cost of all property rights, easements and franchises deemed necessary or convenient therefor; interest upon

the Bonds prior to and during construction or acquisition and for a period not exceeding 6 months after completion of construction of the Project; amounts which may be deposited in the Reserve Accounts; engineering, and legal expenses; expenses for estimates of costs and revenues, expenses for plans, specifications and surveys; other expenses necessary or incident to determining the feasibility or practicability of the enterprise, administrative expense, commitment fees, fees of the Authority (as hereinafter defined), discount, initial fees for the services of registrars, paying agents, depositories or trustees or other costs in connection with the sale of the Bonds and such other expenses as may be necessary or incidental to the financing herein authorized, the construction or acquisition of the Project and the placing of same in operation, and the performance of the things herein required or permitted, in connection with any thereof; provided, that reimbursement to the Issuer for any amounts expended by it for allowable costs prior to the issuance of the Bonds or the repayment of indebtedness incurred by the Issuer for such purposes, shall be deemed Costs of the Project, as hereinafter defined.

F. The Issuer intends to finance such costs of acquisition and construction of the Project through the issuance of its revenue bonds to the West Virginia Water Development Authority (the "Authority") which administers the West Virginia Infrastructure Fund pursuant to the Act.

G. The period of usefulness of the System after completion of the Project is not less than 40 years.

H. It is in the best interests of the Issuer that its Series 1997 A Bonds be sold to the Authority (as hereinafter defined) pursuant to the terms and provisions of a loan agreement to be entered into by and between the Issuer, the Authority, acting for and on behalf of the West Virginia Infrastructure and Jobs Development Council, in form satisfactory to the Issuer and the Authority, as shall be approved herein.

I. The following obligations which are secured by revenues of the System are currently outstanding:

First lien bonds:

- a. 1967 Water and Sewer Revenue Note owned by the United States Department of Agriculture, originally in principal amount of \$58,250.00, with a current outstanding balance of \$21,752.00.
- b. Series 1990 A Water and Sewer Revenue Bonds owned by the Authority, originally in principal amount of \$281,843.00, with a current outstanding balance of \$272,890.00.
- c. Series 1991 A Water and Sewer Revenue Bonds owned by the Authority, originally in principal amount of \$790,057.00, with a current outstanding balance of \$769,492.00.

Second lien bonds

- d. 1977 Water and Sewer Revenue Bonds owned by the United States Department of Agriculture, originally in principal amount of \$290,000.00, with a current outstanding balance of \$\_\_\_\_\_.
- e. Series 1990 B Water and Sewer Revenue Bonds owned by the Authority, originally in principal amount of \$13,157.00, with a current outstanding balance of \$11,129.
- f. Series 1991 B Water and Sewer Revenue Bonds owned by the Authority, originally in principal amount of \$35,671.00, with a current outstanding balance of \$30,977.00.

Other than as set forth above, there are no outstanding obligations of the Issuer which will rank prior to or on a parity with the Bonds as to lien and source of and security for payment. The Series 1997 A Bonds shall be secured by a first lien on the revenues of the System, which lien shall be shared on a proportionate basis with the Issuer's 1967 Water and Sewer Revenue Note, the Series 1990 A Bonds and the Series 1991 A Bonds.

J. The Issuer has complied with all requirements of West Virginia law relating to authorization of the construction, acquisition and operation of the Project and issuance of the Bonds, or will have so complied prior to issuance of any thereof, including obtaining of a Certificate of Convenience and Necessity from the Public Service Commission of West Virginia, by final order, the time for rehearing and appeal will have expired prior to the issuance of the Bonds or such final order shall not be subject to appeal.

K. The Issuer is a governmental unit which has general taxing powers to finance operations of or facilities of the nature of the Project and System; at least 95% of the Net Proceeds of the Bonds are to be used for the local governmental activities of the Issuer; and the Issuer, all subordinate entities, all entities which issue obligations on behalf of the Issuer, and all entities formed or, to the extent provided under Section 148 of the Code, herein defined, availed of, to avoid the purposes of Section 148(f)(4)(C) of the Code and all other entities benefiting thereby reasonably expect to issue less than \$5,000,000 aggregate principal amount of tax-exempt obligations (other than private activity bonds) during the calendar year 1997.

L. The Project has been approved by the West Virginia Infrastructure and Jobs Development Council, as required under Chapter 31, Article 15A of the West Virginia Code of 1931, as amended, and the Council has authorized the Authority to make a loan to the Issuer from the West Virginia Infrastructure Fund.

Section 1.03. Bond Legislation Constitutes Contract. In consideration of the acceptance of the Bonds by those who shall be the registered owners of the same from time to time, this Bond Legislation shall be deemed to be and shall constitute a contract between the Issuer and such Bondholders, and the covenants and agreements herein set forth to be performed by the Issuer shall be for the equal benefit, protection and security of the registered owners of any and all of such Bonds, all which shall be of equal rank and without preference, priority or distinction between any one Bond of a series and any other Bonds of the same series, by reason of priority of issuance or otherwise, except as expressly provided therein and herein.

Section 1.04. Definitions. The following terms shall have the following meanings herein unless the context expressly requires otherwise:

“Act” means Chapter 8, Article 20 and Chapter 31, Article 15A of the West Virginia Code of 1931, as amended and in effect on the date of enactment hereof.

“Authority” means the West Virginia Water Development Authority, which is expected to be the original purchaser of the Series 1997 A Bonds, or any other agency of the State of West Virginia that succeeds to the functions of the Authority. acting in its administrative capacity and upon authorization from the Council under the Act.

“Authorized Officer” means the Mayor of the Issuer or any acting Mayor duly appointed by the Governing Body.

“Bond Construction Trust Fund” means the Bond Construction Trust Fund established by Section 4.01 hereof.

“Bondholder,” “Holder of the Bonds,” “Holder” or any similar term whenever used herein with respect to an outstanding Bond or Bonds, means the person in whose name such Bond is registered.

“Bond Legislation,” “Ordinance,” “Bond Ordinance” or “Local Act” means this Bond Ordinance and all ordinances, orders and resolutions supplemental hereto or amendatory hereof.

“Bond Registrar” means the bank or other entity to be designated as such in the Supplemental Resolution and its successors and assigns.

“Bond Year” means the 12 month period beginning on the anniversary of the Closing Date in each year and ending on the day prior to the anniversary date of the Closing Date in the following year except that the first Bond Year shall begin on the Closing Date.

“Bonds” means the Series 1997 A and any bonds on a parity therewith authorized to be issued hereunder.

“Closing Date” means, with respect to the Series 1997 A Bonds, the date upon which there is an exchange of the Bonds for the proceeds or at least a de minimis portion thereof, representing the purchase of the Bonds by the Authority.

“Code” means the Internal Revenue Code of 1986, as amended, and Regulations.

“Commission” means the West Virginia Municipal Bond Commission or any other agency of the State of West Virginia that succeeds to the functions of the Commission.

“Consulting Engineers” means Stafford Consultants, Incorporated, Princeton, West Virginia, or any engineer or firm of engineers that shall at any time hereafter be retained by the Issuer as Consulting Engineers for the System.

“Costs” or “Costs of the Project” means those costs described in Section 1.02E hereof to be a part of the cost of construction and acquisition of the Project.

“Council” means the West Virginia Infrastructure and Jobs Development Council, or any successor thereto.

“Debt Service” means the scheduled amount of interest and amortization of principal payable on the Bonds during the period of computation, excluding amounts scheduled during such period which relate to principal which has been retired before the beginning of such period.

“Depository Bank” means the bank designated as such in the Supplemental Resolution, and its successors and assigns.

“Excess Investment Earnings” means an amount equal to the sum of:

(A) The excess of

(i) The aggregate amount earned from the Closing Date on all Nonpurpose Investments in which Gross Proceeds of the Series 1997 A Bonds are invested [other than amounts attributable to an excess described in this clause (A) of this definition of Excess Investment Earnings], over

(ii) The amount that would have been earned if the Yield on such Nonpurpose Investments [other than amounts attributable to an excess described in this clause (A) of this definition of Excess Investment Earnings] had been equal to the Yield on the Series 1997 A Bonds, plus

(B) Any income attributable to the excess described in clause (A) of this definition of Excess Investment Earnings.

“FDIC” means the Federal Deposit Insurance Corporation and any successor to the functions of the FDIC.

“Fiscal Year” means each 12-month period beginning on July 1 and ending on the succeeding June 30.

“Governing Body” means the Council of the Issuer, as it may hereafter be constituted.

“Government Obligations” means direct obligations of, or obligations the timely payment of the principal of and interest on which is guaranteed by, the United States of America.

“Gross Proceeds” means the sum of the following amounts:

(i) Original proceeds, namely, net amounts received by or for the Issuer as a result of the sale of the Series 1997 A Bonds, excluding original proceeds which become transferred proceeds (determined in accordance with applicable Regulations) of obligations issued to refund in whole or in part the Series 1997 A Bonds;

(ii) Investment proceeds, namely, amounts received at any time by or for the Issuer, such as interest and dividends, resulting from the investment of any original proceeds (as referenced in clause (i) above) or investment proceeds (as referenced in this clause (ii)) in Nonpurpose Investments, increased by any profits and decreased (if necessary, below zero) by any losses on such investments, excluding investment proceeds which become transferred proceeds (determined in accordance with applicable Regulations) of obligations issued to refund in whole or in part the Series 1997 A Bonds;

(iii) Transferred proceeds, namely, original proceeds of any prior obligations, and interest earnings and profits less losses resulting from investment of such original proceeds in Nonpurpose Investments, which are used to discharge the outstanding principal of any prior bonds and which are deemed to become proceeds of the Series 1997 A Bonds, ratably as original proceeds of the Series 1997 A Bonds, and interest earnings and profits resulting from investment of such original proceeds in Nonpurpose Investments, which are used to discharge the outstanding principal of any such prior obligations, all on the date of such ratable discharge;

(iv) Sinking fund proceeds, namely, amounts, other than original proceeds, investment proceeds or transferred proceeds (as referenced in clauses (i) through (iii) above) of the Series 1997 A Bonds, which are held in any fund to the extent that the Issuer reasonably expects to use such other fund to pay Debt Service;

(v) Amounts in the Series 1997 A Bonds Reserve Account and in any other fund established as a reasonably required reserve or replacement fund;

(vi) Investment Property pledged as security for payment of Debt Service on the Series 1997 A Bonds by the Issuer;

(vii) Amounts, other than as specified in this definition, used to pay Debt Service on the Series 1997 A Bonds; and

(viii) Amounts received as a result of investing amounts described in this definition.

“Gross Revenues” means the aggregate gross operating and non-operating revenues of the System, as hereinafter defined, determined in accordance with generally accepted accounting principles, after deduction of prompt payment discounts, if any, and reasonable provision for uncollectible accounts; provided, that “Gross Revenues” does not include any gains from the sale or other disposition of, or from any increase in the value of, capital assets (including Qualified Investments, as hereinafter defined, purchased pursuant to Article 7.01 hereof).

“Herein,” “hereto” and similar words shall refer to this entire Bond Legislation.

“Independent Certified Public Accountants” shall mean any certified public accountant or firm of certified public accountants that shall at any time hereafter be retained by the Issuer to prepare an independent annual or special audit of the accounts of the System or for any other purpose except keeping the accounts of the System in the normal operation of its business and affairs.

“Investment Property” means any security (as said term is defined in Section 165(g)(2)(A) or (B) of the Code), obligation, annuity contract or investment-type property, excluding, however, obligations the interest on which is excluded from gross income, under Section 103 of the Code, for federal income tax purposes.

“Issuer” means The City of Summersville, in Nicholas County, West Virginia, and, unless the context clearly indicates otherwise, includes the Governing Body of the Issuer.

“Loan Agreement” means the Loan Agreement to be entered into by and between the Authority and the Issuer providing for the purchase of the Series 1997 A Bonds from the Issuer by the Authority, the forms of which shall be approved, and the execution and delivery by the Issuer authorized and directed by the Supplemental Resolution.

“Mayor” means the Mayor of the Issuer.

“Net Proceeds” means the face amount of the Series 1997 A Bonds, plus accrued interest and premium, if any, less original issue discount, if any, and less proceeds deposited in the Series 1997 A Bonds Reserve Account. For purpose of the Private Business Use limitations set forth herein, the term Net Proceeds shall include any amounts resulting from the investment of proceeds of the Series 1997 A Bonds, without regard to whether or not such investment is made in tax-exempt obligations.

“Net Revenues” means the balance of the Gross Revenues, remaining after deduction of Operating Expenses, as hereinafter defined.

“1967 Water and Sewer Note” means the Issuer’s 1967 Water and Sewer Revenue Note described in Section 1.02I hereof.

“1977 Bonds” means the Issuer’s 1977 Water and Sewer Revenue Bonds described in Section 1.02I hereof.

“Nonpurpose Investment” means any Investment Property which is acquired with the Gross Proceeds of the Bonds and is not acquired in order to carry out the governmental purpose of the Bonds.

“Operating Expenses” means the reasonable, proper and necessary costs of repair, maintenance and operation of the System and includes, without limiting the generality of the foregoing, administrative, engineering, legal, auditing and insurance expenses, other than those capitalized as part of the Costs, fees and expenses of the Authority, fiscal agents, the Depository Bank, Registrar and the Paying Agent (all as herein defined), other than those capitalized as part

of the Costs, payments to pension or retirement funds, taxes and such other reasonable operating costs and expenses as should normally and regularly be included under generally accepted accounting principles; provided, that "Operating Expenses" does not include payments on account of the principal of or redemption premium, if any or interest on the Bonds, charges for depreciation, losses from the sale or other disposition of, or from any decrease in the value of, capital assets, amortization of debt discount or such miscellaneous deductions as are applicable to prior accounting periods.

"Outstanding," when used with reference to Bonds and as of any particular date, describes all Bonds theretofore and thereupon being authenticated and delivered except (i) any Bond cancelled by the Bond Registrar at or prior to said date; (ii) any Bond for the payment of which moneys, equal to its principal amount and redemption premium, if applicable, with interest to the date of maturity or redemption shall be in trust hereunder and set aside for such payment (whether upon or prior to maturity); (iii) any Bond deemed to have been paid as provided in Article IX hereof; and (iv) for purposes of consents or other action by a specified percentage of Bondholders, any Bonds registered to the Issuer.

"Parity Bonds" means additional Bonds issued under the provisions and within the limitations prescribed by Section 6.07 hereof.

"Paying Agent" means the West Virginia Municipal Bond Commission, as paying agent for the Series 1997 A Bonds.

"Prior Bonds" means those bonds set forth in Section 1.02I hereof.

"Prior Ordinance" means the Ordinance enacted by the council of the Issuer on May 28, 1991.

"Private Business Use" means use directly or indirectly in a trade or business carried on by a natural person, including all persons "related" to such person within the meaning of Section 144(a)(3) of the Code, or in any activity carried on by a person other than a natural person, including all persons "related" to such person within the meaning of Section 144(a)(3) of the Code, excluding, however, use by a state or local governmental unit and use as a member of the general public. All of the foregoing shall be determined in accordance with the Code, including, without limitation, giving due regard to "incidental use," if any, of the proceeds of the issue and/or proceeds used for "qualified improvements," if any.

"Project" means the project as described in Section 1.02B hereof.

"Purchase Price," for the purpose of computation of the Yield of the Series 1997 A Bonds, has the same meaning as the term "issue price" in Sections 1273(b) and 1274 of the Code, and, in general, means the initial offering price of the Series 1997 A Bonds to the public (not including bond houses and brokers, or similar persons or organizations acting in the capacity of underwriters or wholesalers) at which price a substantial amount of the Series 1997 A Bonds of each maturity is sold or, if the Series 1997 A Bonds are privately placed, the price paid by the first buyer of the Series 1997 A Bonds or the acquisition cost of the first buyer. "Purchase

Price," for purposes of computing Yield of Nonpurpose Investments, means the fair market value of the Nonpurpose Investments on the date of use of Gross Proceeds of the Series 1997 A Bonds for acquisition thereof, or if later, on the date that Investment Property constituting a Nonpurpose Investment becomes a Nonpurpose Investment of the Series 1997 A Bonds.

"Qualified Investments" means and includes any of the following:

- (a) Government Obligations;
- (b) Government Obligations which have been stripped of their unmatured interest coupons, interest coupons stripped from Government Obligations, and receipts or certificates evidencing payments from Government Obligations or interest coupons stripped from Government Obligations;
- (c) Bonds, debentures, notes or other evidences of indebtedness issued by any of the following agencies: Banks for Cooperatives; Federal Intermediate Credit Banks; Federal Home Loan Bank System; Export-Import Bank of the United States; Federal Land Banks; Government National Mortgage Association; Tennessee Valley Authority; or Washington Metropolitan Area Transit Authority;
- (d) Any bond, debenture, note, participation certificate or other similar obligations issued by the Federal National Mortgage Association to the extent such obligation is guaranteed by the Government National Mortgage Association or issued by any other federal agency and backed by the full faith and credit of the United States of America;
- (e) Time accounts (including accounts evidenced by time certificates of deposit, time deposits or other similar banking arrangements) which, to the extent not insured by the FDIC, shall be secured by a pledge of Government Obligations, provided, that said Government Obligations pledged either must mature as nearly as practicable coincident with the maturity of said time accounts or must be replaced or increased so that the market value thereof is always at least equal to the principal amount of said time accounts;
- (f) Money market funds or similar funds whose only assets are investments of the type described in paragraphs (a) through (e) above;
- (g) Repurchase agreements, fully secured by investments of the types described in paragraphs (a) through (e) above, with banks or national banking associations which are members of FDIC or with government bond dealers recognized as primary dealers by the Federal Reserve Bank of New York, provided, that said investments securing said repurchase agreements either must mature as nearly as practicable coincident with the maturity of said repurchase agreements or must be replaced or increased so that the market value thereof is always at least equal to the principal amount of said repurchase agreements, and provided further that the holder of such repurchase agreement shall have a prior perfected security interest in the collateral therefor; must have (or its agent must have) possession of such collateral; and such collateral must be free of all claims by third parties;

(h) The West Virginia "consolidated fund" managed by the West Virginia State Board of Investments Pursuant to Chapter 12, Article 6 of the West Virginia Code of 1931, as amended; and

(i) Obligations of States or political subdivisions or agencies thereof, the interest on which is exempt from federal income taxation, and which are rated at least "A" by Moody's Investors Service, Inc. or Standard & Poor's Corporation.

"Recorder" means the Recorder of the Issuer.

"Registered Owner," "Bondholder," "Holder" or any similar term means whenever used herein with respect to an outstanding Bond or Bonds, the person in whose name such Bond or Bonds is registered.

"Registrar" means the Bond Registrar.

"Regulations" means temporary and permanent regulations promulgated under the Code, or any predecessor thereto.

"Renewal and Replacement Fund" means the Renewal and Replacement Fund established or continued by Section 5.01 of the Prior Ordinance.

"Revenue Fund" means the Revenue Fund established or continued by Section 5.01 of the Prior Ordinance.

"Series 1990 A Bonds" means Issuer's Water and Sewer Revenue Bond Series 1990 A described in Section 1.02I hereof.

"Series 1990 B Bonds" means Issuer's Water and Sewer Revenue Bond Series 1990 B described in Section 1.02I hereof.

"Series 1991 A Bonds" means Issuer's Water and Sewer Revenue Bond Series 1991 A described in Section 1.02I hereof.

"Series 1991 B Bonds" means Issuer's Water and Sewer Revenue Bond Series 1991 B described in Section 1.02I hereof.

"Series 1997 A Bonds" means the not more than \$700,000.00 in aggregate principal amount of Water and Sewer System Revenue Bonds, Series 1997 A, of the Issuer issued pursuant to this Ordinance.

"Series 1990 A Bonds Reserve Account" means the Series 1990 A Bonds Reserve Account continued or established in the Series 1990 A Bonds Sinking Fund pursuant to Section 5.02 of the Prior Ordinance.

“Series 1990 B Bonds Reserve Account” means the Series 1990 B Bonds Reserve Account continued or established in the Series 1990 B Bonds Sinking Fund pursuant to Section 5.02 of the Prior Ordinance.

“Series 1991 A Bonds Reserve Account” means the Series 1991 A Bonds Reserve Account established in the Series 1991 A Bonds Sinking Fund pursuant to Section 5.02 of the Prior Ordinance.

“Series 1991 B Bonds Reserve Account” means the Series 1991 B Bonds Reserve Account established in the Series 1991 B Bonds Sinking Fund pursuant to Section 5.02 of the Prior Ordinance.

“Series 1997 A Bonds Reserve Account” means the Series 1997 A Bonds Reserve Account established in the Series 1997 A Bonds Sinking Fund pursuant to Section 4.02 hereof.

“Series 1990 A Bonds Reserve Requirement” means, as of any date of calculation, the maximum amount of principal and interest which will become due on the Series 1990 A Bonds in the then current or any succeeding year.

“Series 1990 B Bonds Reserve Requirement” means, as of any date of calculation, the maximum amount of principal and interest which will become due on the Series 1990 B Bonds in the then current or any succeeding year.

“Series 1991 A Bonds Reserve Requirement” means, as of any date of calculation, the maximum amount of principal and interest which will become due on the Series 1991 A Bonds in the then current or any succeeding year.

“Series 1991 B Bonds Reserve Requirement” means, as of any date of calculation, the maximum amount of principal and interest which will become due on the Series 1991 B Bonds in the then current or any succeeding year.

“Series 1997 A Bonds Reserve Requirement” means, as of any date of calculation, the maximum amount of principal and interest which will become due on the Series 1997 A Bonds in the then current or any succeeding year.

“Series 1990 A Bonds Sinking Fund” means the Series 1990 A Bonds Sinking Fund continued or established by Section 5.02 of the Prior Ordinance.

“Series 1990 B Bonds Sinking Fund” means the Series 1990 B Bonds Sinking Fund continued or established by Section 5.02 of the Prior Ordinance.

“Series 1991 A Bonds Sinking Fund” means the Series 1991 A Bonds Sinking Fund continued or established by Section 5.02 of the Prior Ordinance.

“Series 1991 B Bonds Sinking Fund” means the Series 1991 B Bonds Sinking Fund continued or established by Section 5.02 of the Prior Ordinance.

“Series 1997 A Bonds Sinking Fund” means the Series 1997 A Bonds Sinking Fund established by Section 4.02 hereof.

“State” means the State of West Virginia.

“Supplemental Resolution” means any resolution, ordinance or order of the Issuer supplementing or amending this Ordinance and, when preceded by the article “the,” refers specifically to the supplemental resolutions authorizing the sale of the Notes or the Original Bonds; provided, that any matter intended by this Ordinance to be included in the Supplemental Resolution with respect to the Original Bonds, and not so included may be included in another Supplemental Resolution.

“Surplus Revenues” means the Net Revenues not required by the Bond Legislation to be set aside and held for the payment of or security for the Bonds or any other obligations of the Issuer, including the Renewal and Replacement Fund and the Reserve Accounts, the proceeds of which Bonds or other obligations are to be used to pay Costs of the Project.

“System” means the existing water and sewer system facilities of the Issuer as expanded by the Project, and all facilities and other property of every nature, real or personal, now or hereafter owned, held or used in connection with said water and sewer system; and shall include any and all additions, extensions, improvements properties or other facilities at any time acquired or constructed for the System after completion of the Project.

“West Virginia Infrastructure Fund” means the West Virginia Infrastructure Fund established in accordance with Chapter 31, Article 15 A of the West Virginia of 1931, as amended and in effect on the date of enactment hereof.

“Yield” means that yield which, when used in computing the present worth of all payments of principal and interest (or other payments in the case of Nonpurpose Investments which require payments in a form not characterized as principal and interest) on a Nonpurpose Investment or on the Series 1997 A Bonds produces an amount equal to the Purchase Price of such Nonpurpose Investment or the Bonds, all computed as prescribed in applicable Regulations.

Words importing singular number shall include the plural number in each case and vice versa; words importing persons shall include firms and corporations; and words importing the masculine, feminine or neutral gender shall include any other gender.

## ARTICLE II

### AUTHORIZATION OF CONSTRUCTION AND ACQUISITION OF THE PROJECT

Section 2.01. Authorization for the Construction and Acquisition of the Project. There is hereby authorized acquisition and construction of the Project in accordance with the plans and specifications prepared by the Consulting Engineers. The Project consists generally of the

extension of water lines to the Glade Creek Area and surrounding communities, by constructing 4,700 lineal feet of 16" waterline, 24,200 lineal feet of 8" waterline, 9,100 lineal feet of 6" waterline and 4,100 lineal feet of 2" waterline, together with valves, hydrants, air releases, service lines, meter settings and all appurtenant facilities. The proceeds of the Bonds hereby authorized shall be applied as provided in Article V hereof.

It is estimated that the proposed construction will cost approximately \$1,711,000.00, and will consist of the following:

Total Construction	\$1,357,000.00
Legal	15,000.00
Land and Right-of-way	20,000.00
Bond Counsel	15,000.00
Basic Engineering	78,000.00
Inspection	66,500.00
Special Services – Engineering	12,000.00
Administration	20,000.00
Accountant	4,500.00
Craigsville PSD – Tank Allocation	70,000.00
Capitalized Interest	20,000.00
Interim Financing	10,000.00
Project Contingency	23,000.00
Total Costs	\$354,000.00
Total Project	\$1,711,000.00

Project costs will be paid for as follows:

Infrastructure Grant	743,000.00
Infrastructure Loan	639,000.00
HUD SCCD Grant	329,000.00
Total Funds	1,711,000.00

The Issuer has received bids and will enter into contracts for the acquisition and construction of the Project, compatible with the financing plan submitted to the Council.

### ARTICLE III

#### AUTHORIZATION, TERMS, EXECUTION, REGISTRATION AND SALE OF BONDS; AUTHORIZATION AND EXECUTION OF LOAN AGREEMENT

Section 3.01. Authorization of Series 1997 A Bonds. For the purposes of paying certain Costs of the Project not otherwise provided for and paying certain costs of issuance of the Series 1997 A Bonds and related costs, there shall be issued negotiable Series 1997 A Bonds of the Issuer, in an aggregate principal amount of not more than \$700,000.00. Said Series 1997 A Bonds shall be issued as a single bond and designated as "Water and Sewer System Revenue Bonds, Series 1997 A." The Series 1997 A Bonds shall have such terms as set forth hereinafter and in the Supplemental Resolution. The proceeds of the Series 1997 A Bonds shall be deposited in the Bond Construction Trust Fund.

Section 3.02. Terms of the Series 1997 A Bonds. The Series 1997 A Bonds shall bear interest at such rate or rates, shall be payable and mature on such dates and in such amounts and shall be redeemable, in whole or in part, all as the Issuer shall prescribe in a Supplemental Resolution, or as specifically provided in the Loan Agreement. The Series 1997 A Bonds shall be payable as to principal at the office of the Paying Agent, in any coin or currency which, on the dates of payment of principal is legal tender for the payment of public or private debts under the laws of the United States of America. Interest on the Series 1997 A Bonds shall be paid by check or draft of the Paying Agent mailed to the registered owner thereof at the address as it appears on the books of the Bond Registrar, or by such other method as shall be mutually agreeable so long as the Authority is the Registered Owner thereof.

Unless otherwise provided by the Supplemental Resolution, the Series 1997 A Bonds shall be issued in the form of a single bond, fully registered to the Authority, with a record of advances and a debt service schedule attached, representing the aggregate principal amount of the Series 1997 A Bonds, and shall mature in principal installments, all as provided in the Supplemental Resolution. The Series 1997 A Bonds shall be exchangeable at the option and expense of the Holder for other fully registered Bonds of the same series in aggregate principal amount equal to the amount of said Bonds then Outstanding and being exchanged, with principal installments or maturities, as applicable, corresponding to the dates of payment of principal installments of said Bonds; provided, that the Authority shall not be obligated to pay any expenses of such exchange.

Subsequent series of Bonds, if any, shall be issued in fully registered form and in denominations as determined by a Supplemental Resolution. The Bonds shall be dated as of the date specified in a supplemental resolution and shall bear interest from the date so specified therein.

Section 3.03. Execution of Bonds. The Bonds shall be executed, either manually or by facsimile, in the name of the Issuer by the Mayor, and the seal of the Issuer shall be affixed thereto or imprinted thereon and attested by the Recorder. In case any one or more of the officers who shall have signed or sealed any of the Bonds shall cease to be such officer of the Issuer

before the Bonds so signed and sealed have been actually sold and delivered, such Bonds may nevertheless be sold and delivered as herein provided and may be issued as if the person who signed or sealed such Bonds had not ceased to hold such office. Any Bonds may be signed and sealed on behalf of the Issuer by such person as at the actual time of the execution of such Bonds shall hold the proper office in the Issuer, although at the date of such Bonds such person may not have held such office or may not have been so authorized.

Section 3.04. Authentication and Registration. No Bond shall be valid or obligatory for any purpose or entitled to any security or benefit under this Bond Legislation unless and until the Certificate of Authentication and Registration on such Bond, substantially in the forms set forth in Section 3.09 shall have been manually executed by the Bond Registrar. Any such executed Certificate of Authentication and Registration upon any such Bond shall be conclusive evidence that such Bond has been authenticated, registered and delivered under this Bond Legislation. The Certificate of Authentication and Registration on any Bond shall be deemed to have been executed by the Bond Registrar if manually signed by an authorized officer of the Bond Registrar, but it shall not be necessary that the same officer sign the Certificate of Authentication and Registration on all of the Bonds issued hereunder.

Section 3.05. Negotiability, Transfer and Registration. Subject to the provisions for transfer of registration set forth below, the Bonds shall be and have all of the qualities and incidents of negotiable instruments under the Uniform Commercial Code of the State of West Virginia, and each successive Holder, in accepting any of said Bonds shall be conclusively deemed to have agreed that such Bonds shall be and have all of the qualities and incidents of negotiable instruments under the Uniform Commercial Code of the State of West Virginia, and each successive Holder shall further be conclusively deemed to have agreed that said Bonds shall be incontestable in the hands of a bona fide holder for value.

So long as any of the Bonds remain outstanding, the Issuer, through the Bond Registrar or its agent, shall keep and maintain books for the registration and transfer of the Bonds.

The registered Bonds shall be transferable only upon the books of the Bond Registrar, by the registered owner thereof in person or by his attorney duly authorized in writing, upon surrender thereto together with a written instrument of transfer satisfactory to the Bond Registrar duly executed by the registered owner or his duly authorized attorney.

In all cases in which the privilege of exchanging Bonds or transferring the registered Bonds are exercised, Bonds shall be delivered in accordance with the provisions of this Bond Legislation. All Bonds surrendered in any such exchanges or transfers shall forthwith be cancelled by the Bond Registrar. For every such exchange or transfer of Bonds, the Bond Registrar may make a charge sufficient to reimburse it for any tax, fee or other governmental charge required to be paid with respect to such exchange or transfer and the cost of preparing each new Bond upon each exchange or transfer, and any other expenses of the Bond Registrar incurred in connection therewith, which sum or sums shall be paid by the Issuer. The Bond Registrar shall not be obliged to make any such exchange or transfer of Bonds during the period commencing on the 15th day of the month preceding an interest payment date on the Bonds or,

in the case of any proposed redemption of Bonds, next preceding the date of the selection of Bonds to be redeemed, and ending on such interest payment date or redemption date.

Section 3.06. Bonds Mutilated, Destroyed, Stolen or Lost. In case any Bond shall become mutilated or be destroyed, stolen or lost, the Issuer may, in its discretion, issue, and the Bond Registrar shall, if so advised by the Issuer, authenticate and deliver, a new Bond of the same series and of like tenor as the Bonds so mutilated, destroyed, stolen or lost, in exchange and substitution for such mutilated Bond, upon surrender and cancellation of such mutilated Bond, or in lieu of and substitution for the Bond destroyed, stolen or lost, and upon the Holder's furnishing satisfactory indemnity and complying with such other reasonable regulations and conditions as the Issuer may prescribe and paying such expenses as the Issuer and the Bond Registrar may incur. All Bonds so surrendered shall be cancelled by the Bond Registrar and held for the account of the Issuer. If any such Bond shall have matured or be about to mature, instead of issuing a substitute Bond, the Issuer may pay the same, upon being indemnified as aforesaid, and if such Bond be lost, stolen or destroyed, without surrender thereof.

Section 3.07. Bonds not to be Indebtedness of the Issuer. The Series 1997 A Bonds shall not, in any event, be or constitute an indebtedness of the Issuer within the meaning of any constitutional or statutory provision or limitation, but shall be payable solely from the Net Revenues derived from the operation of the System as herein provided and amounts, if any, in the Series 1997 A Bonds Reserve Account. No holder or holders of any of the Series 1997 A Bonds shall ever have the right to compel the exercise of the taxing power of the Issuer to pay the Series 1997 A Bonds or the interest thereon.

Section 3.08. Bonds Secured by Pledge of Net Revenues; Series 1997 A Bonds to be on Parity with the 1967 Water and Sewer Note, the Series 1990 A Bonds and the Series 1991 A Bonds. The payment of the debt service of all the 1997 A Bonds shall be secured forthwith equally and ratably with each other, by a first lien on the Net Revenues derived from the System, which first lien shall be shared prorata among the 1967 Water and Sewer Note, the Series 1990 A Bonds, the Series 1991 A Bonds and the Series 1997 A Bonds. Such Net Revenues in an amount sufficient to pay the principal of and interest on and other payments for the Bonds and to make the payments into the Sinking Funds, the Reserve Accounts therein and the Renewal and Replacement Fund hereinafter established, are hereby irrevocably pledged to the payment of the principal of and interest on the Bonds as the same become due.

Section 3.09. Delivery of Bonds. The Issuer shall execute and deliver the Series 1997 A Bonds to the Bond Registrar, and the Registrar shall authenticate, register and deliver the Bonds to the original purchasers thereof upon receipt of the documents set forth below:

A. If other than the Authority, a list of the names in which the Bonds are to be registered upon original issuance, together with such taxpayer identification and other information as the Bond Registrar may reasonably require;

B. A request and authorization to the Bond Registrar, on behalf of the Issuer, signed by an Authorized Officer, to authenticate and deliver the Bonds to the original purchasers;

- C. A certified copy of the Bond Legislation;
- D. An executed copy of the Loan Agreement; and
- E. The unqualified approving opinion of bond counsel on the Bonds.

Section 3.10. Form of Original Bonds. The text of the Bonds shall be in substantially the following forms, with such omissions, insertions and variations as may be necessary and desirable and authorized or permitted hereby, or by any Supplemental Resolution adopted prior to the issuance thereof:

[Form of Series 1997 A Bond]

UNITED STATES OF AMERICA  
STATE OF WEST VIRGINIA  
THE CITY OF SUMMERSVILLE  
WATER AND SEWER SYSTEM REVENUE BOND  
SERIES 1997 A

No. AR-\_\_

\$ \_\_\_\_\_

KNOW ALL MEN BY THESE PRESENTS: That THE CITY OF SUMMERSVILLE, a municipal corporation and political subdivision of the State of West Virginia in Nicholas County of said State (the "Issuer"), for value received, hereby promises to pay, solely from the special funds provided therefor, as hereinafter set forth, to the West Virginia Water Development Authority (the "Authority") or registered assigns the sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), or such lesser amount as shall have been advanced to the Issuer hereunder and not previously repaid, as set forth in the "Record of Advances" attached hereto as Exhibit A and incorporated herein by reference, without interest, in installments on March 1, June 1, September 1 and December 1 of each year, beginning \_\_\_\_\_, as set forth on the "Schedule of Annual Debt Service" attached as Exhibit B hereto and incorporated herein by reference with interest on each installment at the rate per annum set forth on said Exhibit B.

Principal installments of this Bond are payable in any coin or currency which, on the respective dates of payment of such installments, is legal tender for the payment of public and private debts under the laws of the United States of America, at the office of the West Virginia Municipal Bond Commission, Charleston, West Virginia (the "Paying Agent"). The interest on this Bond is payable by check or draft of the Paying Agent mailed to the registered owner hereof at the address as it appears on the books of \_\_\_\_\_, West Virginia, as registrar (the "Registrar") on the 15th day of the month next preceding an interest payment date, or by such other method as shall be mutually agreeable so long as the Authority is the Registered Owner hereof.

This Bond may be redeemed prior to its stated date of maturity in whole or in part, but only with the express written consent of the Authority, and upon the terms and conditions prescribed by, and otherwise in compliance with, the Loan Agreement by and among the Issuer and the Authority, dated \_\_\_\_\_, 1997.

This Bond is issued (i) to pay a portion of the costs of acquisition and construction of certain additions, improvements and betterments to the water and sewer system facilities of the Issuer (the "Project"); and (ii) to pay certain costs of issuance hereof and related costs. This Bond is issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 8, Article 20 of the West Virginia Code of 1931, as amended (the "Act"), and an Ordinance and Supplemental Resolution, duly

enacted and adopted, respectively, by the Issuer on \_\_\_\_\_, 1997, and \_\_\_\_\_, 1997, (collectively called the "Bond Legislation"), and is subject to all the terms and conditions thereof. The Bond Legislation provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for the Bonds under the Bond Legislation.

THIS BOND IS ISSUED ON A PARITY WITH THE 1967 WATER AND SEWER SYSTEM NOTE OF THE ISSUER (THE "1967 WATER AND SEWER NOTE"), ISSUED IN THE AGGREGATE PRINCIPAL AMOUNT OF \$58,250, THE WATER AND SEWER SYSTEM REVENUE BONDS SERIES 1990 A (THE "SERIES 1990 A BONDS") ISSUED IN THE AGGREGATE PRINCIPAL AMOUNT OF 281,843.00 AND THE WATER AND SEWER SYSTEM REVENUE BONDS SERIES 1991 A (THE "SERIES 1991 A BONDS") ISSUED IN THE AGGREGATE PRINCIPAL AMOUNT OF 790,057, WITH RESPECT TO LIENS AND SOURCES OF AND SECURITY FOR PAYMENT OF THE SERIES 1997 A BONDS.

This Bond is payable only from and secured by a first lien pledge of the Net Revenues (as defined in the Bond Legislation) to be derived from the operation of the System, moneys in the Reserve Account created under the Bond Legislation for the Bonds (the "Series 1997 A Bonds Reserve Account"), and unexpended proceeds of the Bonds. Such Net Revenues shall be sufficient to pay the principal of and interest on all bonds which may be issued pursuant to the Act and which shall be set aside as a special fund hereby pledged for such purpose. This Bond does not constitute a corporate indebtedness of the Issuer within the meaning of any constitutional or statutory provisions or limitations, nor shall the Issuer be obligated to pay the same or the interest hereon except from said special fund provided from the Net Revenues, the moneys in the Series 1997 A Bonds Reserve Account and unexpended Bond proceeds. Pursuant to the Bond Legislation, the Issuer has covenanted and agreed to establish and maintain just and equitable rates and charges for the use of the System and the services rendered thereby, which shall be sufficient, together with other revenues of the System, to provide for the reasonable expenses of operation, repair and maintenance of the System, and to leave a balance each year equal to at least 115% of the maximum amount required in any year for principal of and interest on the Series 1997 A Bonds and all other obligations secured by a lien on or payable from such revenues prior to or on a parity with the Series 1997 A Bonds, provided however, that so long as there exists in the Series 1997 A Bonds Reserve Account an amount at least equal to the maximum amount of principal and interest which will become due on the Series 1997 A Bonds in the then current or any succeeding year, and in the respective reserve accounts established for any other obligations outstanding prior to or on a parity with the Series 1997 A Bonds, or an amount at least equal to the requirement therefor, such percentage may be reduced to 110%. The Issuer has entered into certain further covenants with the registered owners of the Bonds for the terms of which reference is made to the Bond Legislation. Remedies provided the registered owners of the Bonds are exclusively as provided in the Bond Legislation, to which reference is here made for a detailed description thereof.

Subject to the registration requirements set forth herein, this Bond is transferable, as provided in the Bond Legislation, only upon the books of the Registrar by the registered owner, or by its attorney duly authorized in writing, upon the surrender of this Bond together with a

written instrument of transfer satisfactory to the Bond Registrar duly executed by the registered owner or its attorney duly authorized in writing.

Subject to the registration requirements set forth herein, this Bond, under the provision of the Act is, and has all the qualities and incidents of, a negotiable instrument under the Uniform Commercial Code of the State of West Virginia.

All money received from the sale of this Bond, after reimbursement and repayment of all amounts advanced for preliminary expenses as provided by law, shall be applied solely to the payment of the Costs of the Project described in the Bond Legislation, and there shall be and hereby is created and granted a lien upon such moneys, until so applied, in favor of the owner of this Bond.

In accordance with the requirements of the United States Department of Agriculture for the issuance of parity obligations, the Bonds will be in default should any proceeds of the Bonds be used for a purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and in the issuance of this Bond have existed, have happened, and have been performed in due time, form and manner as required by law, and that the amount of this Bond, together with all other obligations of the Issuer, does not exceed any limit prescribed by the Constitution or statutes of the State of West Virginia and that a sufficient amount of the revenues of the System has been pledged to and will be set aside into said special fund by the Issuer for the prompt payment of the principal of and interest on this Bond.

All provisions of the Bond Legislation, resolutions and statutes under which this Bond is issued shall be deemed to be a part of the contract evidenced by this Bond to the same extent as if written fully herein.

IN WITNESS WHEREOF, THE CITY OF SUMMERSVILLE has caused this Bond to be signed by its Mayor and its corporate seal to be hereunto affixed and attested by its Recorder, and has caused this Bond to be dated \_\_\_\_\_, 1997.

[SEAL]

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
Recorder

(Form of)

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of The City of Summersville Water and Sewer System Revenue Bonds, Series 1997 A, described in the within-mentioned Bond Legislation and has been duly registered in the name of the registered owner set forth above, as of the date set forth below.

Date: \_\_\_\_\_

\_\_\_\_\_  
as Registrar

By \_\_\_\_\_  
Its Authorized Officer



EXHIBIT B

SCHEDULE OF ANNUAL DEBT SERVICE

(Form of)

ASSIGNMENT

FOR VALUE RECEIVED the undersigned sells, assigns, and transfers unto

the within Bond and does hereby irrevocably constitute and appoint \_\_\_\_\_,  
Attorney to transfer the said Bond on the books kept for registration of the within Bond of the  
said Issuer with full power of substitution in the premises.

Dated: \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_

In the presence of:

\_\_\_\_\_

Section 3.11. Sale of Series 1997 A Bonds; Ratification of Execution of Loan Agreement with Authority. The Series 1997 A Bonds shall be sold to the Authority, pursuant to the terms and conditions of the Loan Agreement. If not so authorized by previous ordinance or resolution, the Mayor is specifically authorized and directed to execute the Loan Agreement in the form attached hereto as "Exhibit A" and made a part hereof and the Recorder is directed to affix the seal of the Issuer, attest the same and deliver the Loan Agreement to the Authority, and any such prior execution and delivery is hereby authorized, ratified and approved.

Section 3.12. "Amended Schedule A" Filing. Upon completion of acquisition and construction of the Project, the Issuer will file with the Authority a schedule substantially in the form of the "Amended Schedule A" to the Loan Agreement, setting forth the actual costs of the Project and sources of funding therefor.

#### ARTICLE IV

##### SYSTEM REVENUES AND APPLICATION THEREOF

Section 4.01. Continuation or Establishment of Fund and Accounts with Depository Bank. The following special funds or accounts are hereby continued or created with and shall be held by the Depository Bank separate and apart from all other funds or accounts of the Depository Bank and from each other:

- (1) Revenue Fund;
- (2) Renewal and Replacement Fund; and
- (3) Bond Construction Trust Fund.

Section 4.02. Continuation or Establishment of Funds and Accounts with Commission. The following special funds or accounts are hereby continued or established with the Commission:

Series 1997 A Bonds Sinking Fund; and

Within the Series 1997 A Bonds Sinking Fund, the Series 1997 A Bonds Reserve Account.

Section 4.03. System Revenues; Flow of Funds. A. The entire Gross Revenues derived from the operation of the System shall be deposited upon receipt in the Revenue Fund. The Revenue Fund shall constitute a trust fund for the purposes provided in this Bond Legislation and shall be kept separate and distinct from all other funds of the Issuer and the Depository Bank and used only for the purposes and in the manner herein provided.

(1) The Issuer shall, each month, pay from the Revenue Fund, all current Operating Expenses of the System.

(2) From the moneys remaining in the Revenue Fund, the Issuer shall next transfer and, simultaneously (i) remit to the National Finance Office the amount required to pay the monthly principal and interest payment on the 1967 Water and Sewer Note, (ii) remit to the Commission  $1/6^{\text{th}}$  of the interest and  $1/12^{\text{th}}$  of the principal next ensuing on the Series 1990 A Bonds, (iii) remit to the Commission  $1/6^{\text{th}}$  of the interest and  $1/12^{\text{th}}$  of the principal next ensuing on the Series 1991 A Bonds, and (iv) commencing 3 months prior to the first date of payment of principal on the Series 1997 A Bonds, apportion and set apart out of the Revenue Fund and remit to the Commission for deposit in the Series 1997 A Bonds Sinking Fund, a sum equal to  $1/3^{\text{rd}}$  of the amount of principal which will mature and become due on said Series 1997 A Bonds on the next ensuing principal payment date; provided that, in the event the period to elapse between the date of such initial deposit in the Series 1997 A Bonds Sinking Fund and the next quarterly principal payment date is less than 3 months then such monthly payments shall be increased proportionately to provide, one month prior to the next quarterly principal payment date, the required amount of principal coming due on such date.

In the event there is insufficient money in the Revenue Fund to make the payments described in the paragraph above, the Issuer shall use the available moneys and make the payments provided for on a prorata basis as to each series of bonds.

(3) Next, from the moneys remaining in the Revenue Fund, the Issuer shall next transfer and, simultaneously (i) remit to the National Finance Office the amount required to pay the monthly principal and interest payment on the 1977 Water and Sewer Revenue Bonds, (ii) remit to the Commission  $1/12^{\text{th}}$  of the principal next ensuing on the Series 1990 B Bonds, (iii) remit to the Commission  $1/12^{\text{th}}$  of the principal next ensuing on the Series 1991 B Bonds.

In the event there is insufficient money in the Revenue Fund to make the payments described in the paragraph above, the Issuer shall use the available moneys and make the payments provided for on a prorata basis as to each series of bonds.

(4) Thereafter, the Issuer shall, remit to the Commission (i) an amount equal to  $1/120^{\text{th}}$  of the Series 1990 A Bonds Reserve Requirement, (ii) an amount equal to  $1/120^{\text{th}}$  of the Series 1991 A Bonds Reserve Requirement and (iii) commencing 3 months prior to the first date of payment of principal of the Series 1997 A Bonds apportion and set apart out of the Revenue Fund and remit to the Commission for deposit in the Series 1997 A Bonds Reserve Account, an amount equal to  $1/120^{\text{th}}$  of the Series 1997 A Bonds Reserve Requirement; provided, that no further payments shall be made into the Series 1990 A Bonds Reserve Account, Series 1991 A Bonds Reserve Account or the Series 1997 A Bonds Reserve Account when there shall have been deposited therein, and as long as there shall remain on deposit in each respective account, an amount equal to the Series 1990 A Bonds Reserve Requirement, the Series 1991 A Bonds Reserve Requirement or the Series 1997 A Bonds Reserve Requirement, as the case may be.

In the event there is insufficient money in the Revenue Fund to make the payments described in the paragraph above, the Issuer shall use the available moneys and make the payments provided for on a prorata basis as to each series of bonds.

(5) Thereafter, the Issuer shall, remit to the Commission (i) an amount equal to 1/120<sup>th</sup> of the Series 1990 B Bonds Reserve Requirement and (ii) an amount equal to 1/120<sup>th</sup> of the Series 1991 B Bonds Reserve Requirement; provided, that no further payments shall be made into the Series 1990 B Bonds Reserve Account or Series 1991 B Bonds Reserve Account when there shall have been deposited therein, and as long as there shall remain on deposit in each respective account, an amount equal to the Series 1990 B Bonds Reserve Requirement or the Series 1991 B Bonds Reserve Requirement, as the case may be.

In the event there is insufficient money in the Revenue Fund to make the payments described in the paragraph above, the Issuer shall use the available moneys and make the payments provided for on a prorata basis as to each series of bonds.

(6) From the moneys remaining in the Revenue Fund, the Issuer shall next, on the first day of each month, commencing with the month succeeding the first full calendar month after completion of the Project, transfer to the Renewal and Replacement Fund a sum equal to 2 1/2% of the Gross Revenues each month, exclusive of any payments for account of the Series 1990 A Bonds Reserve Account, the Series 1991 A Bonds Reserve Account, the Series 1990 B Bonds Reserve Account, the Series 1991 B Bonds Reserve Account, or the Series 1997 A Bonds Reserve Account. All funds in the Renewal and Replacement Fund shall be kept apart from all other funds of the Issuer or of the Depository Bank and shall be invested and reinvested in accordance with Article VII hereof. Withdrawals and disbursements may be made from the Renewal and Replacement Fund for replacements, emergency repairs, improvements or extensions to the System; provided, that any deficiencies in the Series 1991 A Bonds Reserve Account, the Series 1990 B Bonds Reserve Account, the Series 1991 B Bonds Reserve Account, or the Series 1997 A Bonds Reserve Account [except to the extent such deficiency exists because the required payments into such account have not, as of the date of determination of a deficiency, funded such account to the maximum extent required by Subsection 4.03(A)(2)(d)] shall be promptly eliminated with moneys from the Renewal and Replacement Fund.

Moneys in the various Sinking Funds shall be used only for the purposes of paying principal of and interest, if any, on the respective series of Bonds for which it was deposited, as the same shall become due. Moneys in the respective Reserve Accounts shall be used only for the purpose of paying principal of and interest, if any, on the respective series of bonds for which it was deposited, as the same shall come due, when other moneys in respective Sinking Fund are insufficient therefor, and for no other purpose.

All investment earnings on moneys in the various Sinking Funds and respective Reserve Accounts shall be returned, not less than once each year, by the Commission to the Issuer, and such amounts shall, during construction of the Project, be deposited in the Bond Construction Trust Fund, and following completion of construction of the Project, shall be deposited in the respective Sinking Fund to which it relates and applied to the next ensuing interest payments, if

any, due on the respective series of bonds for which it was deposited, and then to the next ensuing principal payments due thereon.

Any withdrawals from the any of the respective Reserve Accounts which result in a reduction in the balance of such Reserve Account to below the respective bond Reserve Requirement shall be subsequently restored from the first Net Revenues available after all required payments set forth in Section 4.03 (A) (1) – (5) above have been made in full.

As and when additional Bonds ranking on a parity with the Bonds are issued, provision shall be made for additional payments into the respective Sinking Fund sufficient to pay the interest on such additional parity Bonds and accomplish retirement thereof at maturity and to accumulate a balance in the appropriate Reserve Account in an amount equal to the maximum provided and required to be paid into the concomitant Sinking Fund in any year for account of the Bonds of such series, including such additional Bonds which by their terms are payable from such Sinking Fund.

The Issuer shall not be required to make any further payments into the Series 1990 A Bonds Sinking Fund or into the Reserve Account therein when the aggregate amount of funds in said Series 1990 A Bonds Sinking Fund and Reserve Account are at least equal to the aggregate principal amount of the Series 1990 A Bonds then Outstanding and all interest to accrue until the maturity thereof.

The Issuer shall not be required to make any further payments into the Series 1991 A Bonds Sinking Fund or into the Reserve Account therein when the aggregate amount of funds in said Series 1991 A Bonds Sinking Fund and Reserve Account are at least equal to the aggregate principal amount of the Series 1991 A Bonds then Outstanding and all interest to accrue until the maturity thereof.

The Issuer shall not be required to make any further payments into the Series 1990 B Bonds Sinking Fund or into the Reserve Account therein when the aggregate amount of funds in said Series 1990 B Bonds Sinking Fund and Reserve Account are at least equal to the aggregate principal amount of the Series 1990 B Bonds Outstanding and all interest to accrue until the maturity thereof.

The Issuer shall not be required to make any further payments into the Series 1991 B Bonds Sinking Fund or into the Reserve Account therein when the aggregate amount of funds in said Series 1991 B Bonds Sinking Fund and Reserve Account are at least equal to the aggregate principal amount of the Series 1991 B Bonds then Outstanding and all interest to accrue until the maturity thereof.

The Issuer shall not be required to make any further payments into the Series 1997 A Bonds Sinking Fund or into the Reserve Account therein when the aggregate amount of funds in said Series 1997 A Bonds Sinking Fund and Reserve Account are at least equal to the aggregate principal amount of the Series 1997 A Bonds issued pursuant to this Bond Legislation then Outstanding and all interest to accrue until the maturity thereof.

The Commission is hereby designated as the fiscal agent for the administration of the Sinking Fund created hereunder, and all amounts required for said Sinking Fund shall be remitted to the Commission from the Revenue Fund by the Issuer at the times provided herein.

The payments into the Sinking Fund shall be made on the first day of each month, except that when the first day of any month shall be a Sunday or legal holiday then such payments shall be made on the next succeeding business day, and all such payments shall be remitted to the Commission with appropriate instructions as to the custody, use and application thereof consistent with the provisions of this Bond Legislation.

Moneys in the respective Reserve Accounts shall be invested and reinvested by the Commission in accordance with Section 7.01 hereof.

The Series 1997 A Bonds Sinking Fund, including the Reserve Account therein, shall be used solely and only for, and are hereby pledged for, the purpose of servicing the Series 1997 A Bonds and any additional Bonds ranking on a parity therewith that may be issued and Outstanding under the conditions and restrictions hereinafter set forth.

B. Whenever all of the required and provided transfers and payments from the Revenue Fund into the several special funds, as hereinbefore provided, are current and there remains in said Revenue Fund a balance in excess of the estimated amounts required to be so transferred and paid into the Sinking Fund, including the Reserve Accounts therein, and the Renewal and Replacement Fund during the following month or such other period as required by law, such excess shall be considered Surplus Revenues. Surplus Revenues may be used for any lawful purpose of the System.

C. The Issuer shall complete the "monthly Payment Form," a form of which is attached to the Loan Agreement as Exhibit F, and submit a copy of said form along with a copy of its check to the Authority by the 5th day of each calendar month.

D. The Issuer shall remit from the Revenue Fund to the Commission, the Registrar or the Depository Bank, on such dates as the Commission, the Registrar or the Depository Bank, as the case may be, shall require, such additional sums as shall be necessary to pay their respective charges fees and expenses then due.

E. The moneys in excess of the sum insured by the maximum amounts insured by FDIC in the Revenue Fund and the Renewal and Replacement Fund shall at all times be secured, to the full extent thereof in excess of such insured sum, by Qualified Investments as shall be eligible as security for deposits of state and municipal funds under the laws of the State.

F. If on any monthly payment date the revenues are insufficient to place the required amount in any of the funds and accounts as hereinabove provided, the deficiency shall be made up in the subsequent payments in addition to the payments which would otherwise be required to be made into the funds and accounts on the subsequent payment dates.

G. All remittances made by the Issuer to the Commission shall clearly identify the fund or account into which each amount is to be deposited.

H. The Gross Revenues of the System shall only be used for purposes of the System.

## ARTICLE V

### BOND PROCEEDS; FUNDS AND ACCOUNTS

Section 5.01. Application of Series 1997 A Bond Proceeds; Pledge of Unexpended Bond Proceeds. The moneys received from the sale of the Series 1997 A Bonds, as requisitioned by the Issuer, shall be deposited in the Bond Construction Trust Fund and applied solely to payment of Costs of the Project in the manner set forth in Section 5.02.

The Depository Bank shall act as a trustee and fiduciary for the Bondholder with respect to the Bond Construction Trust Fund and shall comply with all requirements with respect to the disposition of the Bond Construction Trust Fund set forth in the Bond Legislation. Moneys in the Bond Construction Trust Fund shall be used solely to pay Costs of the Project and until so expended, are hereby pledged as additional security for the Series 1997 A Bonds.

Section 5.02. Disbursements From the Bond Construction Trust Fund. The Issuer shall each month provide the Council and the Authority with a requisition for the costs incurred for the Project, together with such documentation as the Council shall require. Payments for Costs of the Project shall be made monthly.

Disbursements from the Bond Construction Trust Fund shall be made only after submission to, and approval from the Authority and the Council of the following:

(1) a certificate signed by an Authorized Officer and the Consulting Engineers, stating:

(A) That none of the items for which the payment is proposed to be made has formed the basis for any disbursement theretofore made;

(B) That each item for which the payment is proposed to be made is or was necessary in connection with the Project and constitutes a Cost of the Project;

(C) That each of such costs has been otherwise properly incurred; and

(D) That payment for each of the items proposed is then due and owing, or that Issuer has previously paid such item in connection with the Project is being reimbursed for such payment.

In case any contract provides for the retention of a portion of the contract price, the Depository Bank shall disburse from the Bond Construction Trust Fund only the net amount remaining after deduction of any such portion. All payments made from the Bond Construction Trust Fund shall be presumed by the Depository Bank to be made for the purposes set forth in

said certificate, and the Depository Bank shall not be required to monitor the application of disbursements from the Bond Construction Trust Fund. The Consulting Engineers shall from time to time file with the Depository Bank written statements advising the Depository Bank of its then authorized representative.

Pending such application, moneys in the Bond Construction Trust Fund, including any accounts therein, shall be invested and reinvested in Qualified Investments at the written direction of the Issuer.

After completion of the Project, as certified by the Consulting Engineers, the Depository Bank shall transfer any moneys remaining in the Bond Construction Trust Fund to the Series 1997 A Bonds Reserve Account, and when fully funded, shall return such remaining moneys to the Issuer for deposit in the Revenue Fund. The Issuer shall thereafter, apply such moneys in full, first to the next ensuing interest payments, if any, due on the Series 1997 A Bonds and thereafter to the next ensuing principal payments due thereon.

## ARTICLE VI

### ADDITIONAL COVENANTS OF THE ISSUER

Section 6.01. General Covenants of the Issuer. All the covenants, agreements and provisions of this Bond Legislation shall be and constitute valid and legally binding covenants of the Issuer and shall be enforceable in any court of competent jurisdiction by any Holder or Holders of the Bonds. In addition to the other covenants, agreements and provisions of this Bond Legislation, the Issuer hereby covenants and agrees with the Holders of the Bonds as hereinafter provided in this Article VI. All such covenants, agreements and provisions shall be irrevocable, except as provided herein, as long as any of said Bonds or the interest thereon is Outstanding and unpaid.

Section 6.02. Bonds not to be Indebtedness of the Issuer. The Bonds shall not be nor constitute an indebtedness of the Issuer within the meaning of any constitutional, statutory or charter limitation of indebtedness, but shall be payable solely from the funds pledged for such payment by this Bond Legislation. No Holder or Holders of any Bonds shall ever have the right to compel the exercise of the taxing power of the Issuer to pay said Bonds or the interest thereon.

Section 6.03. Bonds Secured by Pledge of Net Revenues. The payment of the debt service of the Series 1997 A Bonds issued hereunder shall be secured forthwith equally and ratably by a shared first lien on the Net Revenues derived from the operation of the System, which first lien is shared with the Issuer's 1967 Water and Sewer Revenue Note, the Series 1990 A Bonds and the Series 1991 A Bonds. The revenues derived from the System, in an amount sufficient to pay the principal of and interest on the Bonds and to make the payments into the Sinking Funds, including the Reserve Accounts therein, and all other payments provided for in the Bond Legislation are hereby irrevocably pledged, in the manner provided herein, to the payment of the principal of and interest on the Bonds as the same become due, and for the other purposes provided in the Bond Legislation.

Section 6.04. Initial Schedule of Rates and Charges. The initial schedule of rates and charges for the services and facilities of the System shall be as set forth in the ordinance of the Issuer enacted \_\_\_\_\_.

Section 6.05. Sale of the System. Except as otherwise required by law, the System may not be sold, mortgaged, leased or otherwise disposed of except as a whole, or substantially as a whole, and only if the net proceeds to be realized shall be sufficient to pay fully all the Bonds Outstanding, or to effectively defease this Bond Legislation in accordance with Section 9.01 hereof. The proceeds from any such sale, mortgage, lease or other disposition of the System shall, with respect to the Bonds, immediately be remitted to the Commission for deposit in the Sinking Funds, and, with the written permission of the Authority, or in the event the Authority is no longer a Bondholder, the Issuer shall direct the Commission to apply such proceeds to the payment of principal at maturity of and interest on the Bonds. Any balance remaining after the payment of all the Bonds and interest thereon shall be remitted to the Issuer by the Commission unless necessary for the payment of other obligations of the Issuer payable out of the revenues of the System.

The foregoing provision notwithstanding, the Issuer shall have and hereby reserves the right to sell, lease or otherwise dispose of any of the property comprising a part of the System hereinafter determined in the manner provided herein to be no longer necessary, useful or profitable in the operation thereof. Prior to any such sale, lease or other disposition of such property, if the amount to be received therefor, together with all other amounts received during the same Fiscal Year for such sales, leases or other dispositions of such properties, is not in excess of \$50,000, the Issuer shall, by resolution, determine that such property comprising a part of the System is no longer necessary, useful or profitable in the operation thereof and may then provide for the sale of such property. The proceeds of any such sale shall be deposited in the Renewal and Replacement Fund. If the amount to be received from such sale, lease or other disposition of said property, together with all other amounts received during the same Fiscal Year for such sales, leases or other dispositions of such properties, shall be in excess of \$50,000 but not in excess of \$200,000, the Issuer shall first, in writing determine with the written approval of the Consulting Engineers that such property comprising a part of the System is no longer necessary, useful or profitable in the operation thereof and may then, if it be so advised, by resolution duly adopted, authorize such sale, lease or other disposition of such property upon public bidding. The proceeds derived from any such sale, lease or other disposition of such property, aggregating during such Fiscal Year in excess of \$50,000 and not in excess of \$200,000, shall with the written consent of the Authority, be remitted by the Issuer to the Commission for deposit in the Sinking Fund and shall be applied only to the purchase of Bonds of the last maturities then Outstanding at prices not greater than the par value thereof plus 3% of such par value or otherwise. Such payment of such proceeds into the Sinking Fund or the Renewal and Replacement Fund shall not reduce the amounts required to be paid into said funds by other provisions of this Bond Legislation. No sale, lease or other disposition of the properties of the System shall be made by the Issuer if the proceeds to be derived therefrom, together with all other amounts received during the same Fiscal Year for such sales, leases, or other dispositions of such properties, shall be in excess of \$200,000 and insufficient to pay all Bonds then Outstanding without the prior approval and consent in writing of the Holders, or their duly authorized representatives, of over 50% in amount of the Bonds then Outstanding and the

Consulting Engineers. The Issuer shall prepare the form of such approval and consent for execution by the then Holders of the Bonds for the disposition of the proceeds of the sale, lease or other disposition of such properties of the System.

Section 6.06. Issuance of Other Obligations Payable Out of Revenues and General Covenant Against Encumbrances. Except as provided in this Section 6.06 and in Section 6.07B, the Issuer shall not issue any other obligations whatsoever payable from the revenues of the System which rank prior to, or equally, as to lien on and source of and security for payment from such revenues with the Bonds; provided, however, that additional Bonds on a parity with the Bonds may be issued as provided for in Section 6.07 hereof. All obligations issued by the Issuer after the issuance of the Bonds and payable from the revenues of the System, except such additional parity Bonds, shall contain an express statement that such obligations are junior and subordinate, as to lien on and source of and security for payment from such revenues and in all other respects, to the Series 1997 A Bonds; provided, that no such subordinate obligations shall be issued unless all payments required to be made into the Reserve Accounts and the Renewal and Replacement Fund at the time of the issuance of such subordinate obligations have been made and are current.

Except as provided above, the Issuer shall not create, or cause or permit to be created, any debt, lien, pledge, assignment, encumbrance or any other charge having priority over or being on a parity with the lien of the Bonds, and the interest thereon, upon any of the income and revenues of the System pledged for payment of the Bonds and the interest thereon in this Bond Legislation, or upon the System or any part thereof.

The Issuer shall give the Authority and the Council prior written notice of its issuance of any other obligations to be used for the System, payable from the revenues of the System from any grants for the Project, or any other obligations related to the Project or the System.

Section 6.07. Parity Bonds A. No Parity Bonds, payable out of the revenues of the System, shall be issued after the issuance of any Bonds pursuant to this Bond Legislation, except under the conditions and in the manner herein provided and with the written consent of the Authority and the Council.

No such Parity Bonds shall be issued except for the purpose of financing the costs of the construction or acquisition of extensions, improvements or betterments to the System or refunding one or more series of Bonds issued pursuant hereto, or both such purposes.

No Parity Bonds shall be issued at any time, however, unless there has been procured and filed with the Authority and the Bank a written statement by the Independent Certified Public Accountants, based upon the necessary investigation and certification by the Consulting Engineers, reciting the conclusion that the Net Revenues actually derived, subject to the adjustments hereinafter provided for, from the System during any 12 consecutive months, within the 18 months immediately preceding the date of the actual issuance of such Parity Bonds, plus the estimated average increased annual Net Revenues to be received in each of the 3 succeeding years after the completion of the improvements to be financed by such Parity Bonds, shall not be

less than 115% of the largest aggregate amount that will mature and become due in any succeeding Fiscal Year for principal of and interest on the following:

- (1) The Bonds then Outstanding;
- (2) Any Parity Bonds theretofore issued pursuant to the provisions contained in this Resolution then Outstanding; and
- (3) The Parity Bonds then proposed to be issued.

The "estimated average increased annual Net Revenues to be received in each of the 3 succeeding years," as that term is used in the computation provided in the above paragraph, shall refer only to the increased Net Revenues estimated to be derived from (a) the improvements to be financed by such Parity Bonds and (b) any increase in rates adopted by the Issuer, the period for appeal of which has expired prior to the date of delivery of such Parity Bonds, and shall not exceed the amount to be stated in a certificate of the Consulting Engineers, which shall be filed in the office of the Recorder prior to the issuance of such Parity Bonds.

The Net Revenues actually derived from the System during the 12-consecutive-month period hereinabove referred to may be adjusted by adding to such Net Revenues such additional Net Revenues which would have been received, in the opinion of the Consulting Engineers and the said Independent Certified Public Accountants, as stated in a certificate jointly made and signed by the Consulting Engineers and said Independent Certified Public Accountants, on account of increased rates, rentals, fees and charges for the System adopted by the Issuer, the period for appeal of which has expired prior to issuance of such Parity Bonds.

Not later than simultaneously with the delivery of such Parity Bonds, the Issuer shall have entered into written contracts for the immediate construction or acquisition of such additions, betterments or improvements, if any, to the System that are to be financed by such Parity Bonds.

All covenants and other provisions of this Bond Legislation (except as to details of such Parity Bonds inconsistent herewith) shall be for the equal benefit, protection and security of the Holders of the Bonds and the Holders of any Parity Bonds subsequently issued from time to time within the limitations of and in compliance with this section. Bonds issued on a parity, regardless of the time or times of their issuance, shall rank equally with respect to their lien on the revenues of the System and their source of and security for payment from said revenues, without preference of any Bond of one series over any other Bond of the same series. The Issuer shall comply fully with all the increased payments into the various funds and accounts created in this Bond Legislation required for and on account of such Parity Bonds, in addition to the payments required for Bonds theretofore issued pursuant to this Bond Legislation.

All Parity Bonds shall mature on the day of the years of maturities, and the semiannual interest thereon shall be payable on the days of each year, specified in a Supplemental Resolution.

Parity Bonds shall not be deemed to include bonds, notes, certificates or other obligations subsequently issued, the lien of which on the revenues of the System is subject to the prior and superior liens of the Series 1997 A Bonds on such revenues. The Issuer shall not issue any obligations whatsoever payable from the revenues of the System, or any part thereof, which rank prior to or, except in the manner and under the conditions provided in this section, equally, as to lien on and source of and security for payment from such revenues, with the Series 1997 A Bonds.

No Parity Bonds shall be issued any time, however, unless all the payments into the respective funds and accounts provided for in this Bond Legislation with respect to the Bonds then Outstanding, and any other payments provided for in this Bond Legislation, shall have been made in full as required to the date of delivery of such Parity Bonds, and the Issuer shall then be in full compliance with all the covenants, agreements and terms of this Bond Legislation.

B. Notwithstanding the foregoing, or any provision of Section 6.06 to the contrary, additional Bonds may be issued solely for the purpose of completing the Project as described in the application to the Authority submitted as of the date of the Loan Agreement without regard to the restrictions set forth in this Section 6.07, if there is first obtained by the Issuer the written consent of the Authority and the Council to the issuance of bonds on a parity with the Bonds.

Section 6.08. Books and Records. The Issuer shall keep complete and accurate records of the cost of acquiring the Project Site and the costs of acquiring, constructing and installing the Project. The Issuer shall permit the Authority or its agents and representatives, to inspect all books, documents, papers and records relating to the Project and the System at all reasonable times for the purpose of audit and examination. The Issuer shall submit to the Authority and the Council such documents and information as they may reasonably require in connection with the acquisition, construction and installation of the Project, the operation and maintenance of the System and the administration of the loan or any grants or other sources of financing for the Project.

The Issuer shall permit the Authority or its agents and representatives, to inspect all records pertaining to the operation of the System at all reasonable times following completion of construction of the Project and commencement of operation thereof, or, if the Project is an improvement to an existing System, at any reasonable time following commencement of construction.

The Issuer will keep books and records of the System, which shall be separate and apart from all other books, records and accounts of the Issuer, in which complete and correct entries shall be made of all transactions relating to the System, and any Holder of a Bond or Bonds issued pursuant to this Bond Legislation shall have the right at all reasonable times to inspect the System and all parts thereof and all records, accounts and data of the Issuer relating thereto.

The accounting system for the System shall follow current generally accepted accounting principles and safeguards to the extent allowed and as prescribed by the Public Service Commission of West Virginia. Separate control accounting records shall be maintained by the Issuer. Subsidiary records as may be required shall be kept in the manner and on the forms,

books and other bookkeeping records as prescribed by the Governing Body. The Governing Body shall prescribe and institute the manner by which subsidiary records of the accounting system which may be installed remote from the direct supervision of the Governing Body shall be reported to such agent of the Issuer as the Governing Body shall direct.

The Issuer shall file with the Council and the Authority, or any other original purchaser of the Bonds, and shall mail in each year to any Holder or Holders of Bonds requesting the same, an annual report containing the following:

(A) A statement of Gross Revenues, Operating Expenses, Net Revenues and Surplus Revenues derived from and relating to the System.

(B) A balance sheet statement showing all deposits in all the funds and accounts provided for in this Bond Legislation with respect to said Bonds and the status of all said funds and accounts.

(C) The amount of any Bonds or other obligations outstanding.

The Issuer shall also, at least once a year, cause the books, records and accounts of the System to be audited by Independent Certified Public Accountants and shall mail upon request, and make available generally, the report of said Independent Certified Public Accountants, or a summary thereof, to any Holder or Holders of Bonds and shall submit said report to the Authority and the Council, or any other original purchaser of the Bonds. Such audit report submitted to the Authority and Council shall include a statement that the Issuer is in compliance with the terms and provisions of the Loan Agreement and this Bond Legislation, and the Issuer's Revenues are adequate to meet its operation and maintenance expenses and debt service requirements.

Commencing on the date contracts are executed for the acquisition and construction of the Project and for 2 years following completion of the Project, the Issuer shall each month complete a "Monthly Financial Report," a form of which is attached to the Loan Agreement as Exhibit C, and forward a copy to the Authority and the Council by the 15th day of each month.

The Issuer shall permit the Authority or its agents and representatives, to enter and inspect the Project site and Project facilities at all reasonable times. Prior to, during and after completion of the Project, the Issuer shall also provide the Authority or its agents and representatives, with access to the System site and System facilities as may be reasonably necessary to accomplish all of the powers and rights of the Authority with respect to the System pursuant to the Act.

Section 6.09. Rates. Equitable rates or charges for the use of and service rendered by the System have been established all in the manner and form required by law, and copies of such rates and charges so established will be continuously on file with the Recorder, which copies will be open to inspection by all interested parties. The schedule of rates and charges shall at all times be adequate to produce Gross Revenues from said System sufficient to pay Operating Expenses and to make the prescribed payments into the funds created hereunder. Such schedule

of rates and charges shall be changed and readjusted whenever necessary so that the aggregate of the rates and charges will be sufficient for such purposes. In order to assure full and continuous performance of this covenant, with a margin for contingencies and temporary unanticipated reduction in income and revenues, the Issuer hereby covenants and agrees that the schedule of rates or charges from time to time in effect shall be sufficient, together with other revenues of the System (i) to provide for all reasonable expenses of operation, repair and maintenance of the System and (ii) to leave a balance each year equal to at least 115% of the maximum amount required in any year for payment of principal of and interest on the Bonds and all other obligations secured by a lien on or payable from such revenues prior to or on a parity with the Bonds; provided that, in the event an amount equal to or in excess of the Reserve Requirement is on deposit in the Reserve Account and reserve accounts for obligations prior to or on a parity with the Bonds are funded at least at the requirement therefor, such balance each year need only equal at least 110% of the maximum amount required in any year for payment of principal of and interest on the Bonds and all other obligations secured by a lien on or payable from such revenues prior to or on a parity with the Bonds. In any event, subject to any requirements of law, the Issuer shall not reduce the rates and charges for services set forth in the rate ordinance described in the Section 6.04 hereof.

Section 6.10. Operating Budget and Audit. The Issuer shall annually, at least 45 days preceding the beginning of each Fiscal Year, prepare and adopt by resolution a detailed, balanced budget of the estimated expenditures for operation and maintenance of the System during the succeeding Fiscal Year and shall submit a copy of such budget to the Authority within 30 days of adoption thereof. No expenditures for the operation and maintenance of the System shall be made in any Fiscal Year in excess of the amounts provided therefor in such budget without a written finding and recommendation by the Consulting Engineers, which finding and recommendation shall state in detail the purpose of and necessity for such increased expenditures for the operation and maintenance of the System, and no such increased expenditures shall be made until the Issuer shall have approved such finding and recommendation by a resolution duly adopted. No increased expenditures in excess of 10% of the amount of such budget shall be made except upon the further certificate of the Consulting Engineers that such increased expenditures are necessary for the continued operation of the System. The Issuer shall mail copies of such annual budget and all resolutions authorizing increased expenditures for operation and maintenance to the Authority and to any Holder of any Bonds, who shall file his or her address with the Issuer and request in writing that copies of all such budgets and resolutions be furnished him or her and shall make available such budgets and all resolutions authorizing increased expenditures for operation and maintenance of the System at all reasonable times to any Holder of any Bonds or anyone acting for and in behalf of such Holder of any Bonds.

Section 6.11. No Competing Franchise. To the extent legally allowable, the Issuer will not grant or cause, consent to or allow the granting of, any franchise or permit to any person, firm, corporation, body, agency or instrumentality whatsoever for the providing of any services which would compete with services provided by the System.

Section 6.12. Engineering Services and Operating Personnel. The Issuer shall provide and maintain competent and adequate resident engineering services satisfactory to the Authority and the Council covering the supervision and inspection of the development and construction of

the Project and bearing responsibility of assuring that construction conforms to the plans, specifications and designs prepared by the Consulting Engineers, which have been approved by all necessary governmental bodies. Such resident engineer shall certify to the Authority, the Council and the Issuer that the Project is adequate for the purposes for which it was designed, the funding plan submitted to the Authority and the Council is sufficient to pay the costs of acquisition and construction of the Project, and all permits required by federal and state laws for construction of the Project have been obtained. At the completion of construction such engineer shall certify that construction of the Project is in accordance with the approved plans, specifications and designs, or amendments thereto, approved by all necessary governmental bodies.

The Issuer agrees that qualified operating personnel properly certified by the State will be employed to operate the System during the entire term of the Loan Agreement.

Section 6.13. Enforcement of Collections. The Issuer will diligently enforce and collect all fees, rentals or other charges for the services and facilities of the System, and take all steps, actions and proceedings for the enforcement and collection of such fees, rentals or other charges which shall become delinquent to the full extent permitted or authorized by the Act, the rules of the Issuer, the rules and regulations of the Public Service Commission of West Virginia and other laws of the State of West Virginia.

Whenever any fees, rates, rentals or other charges for the services and facilities of the System shall remain unpaid for a period of 30 days after the same shall become due and payable, the property and the owner thereof, as well as the user of the services and facilities, shall be delinquent until such time as all such rates and charges are fully paid. To the extent authorized by the laws of the State and the rules and regulations of the Public Service Commission of West Virginia, rates, rentals and other charges, if not paid, when due, shall become a lien on the premises served by the System. The Issuer further covenants and agrees that, it will, to the full extent permitted by law and the rules and regulations promulgated by the Public Service Commission of West Virginia, discontinue and shut off the services of the System and any services and facilities of the water system, if so owned by the Issuer, to all users of the services of the System delinquent in payment of charges for the services of the System and will not restore such services of either system until all delinquent charges for the services of the System, plus reasonable interest and penalty charges for the restoration of service, have been fully paid and shall take all further actions to enforce collections to the maximum extent permitted by law, or, if the waterworks facilities are not owned by the Issuer, the Issuer will, to the extent allowed by law, use diligent efforts to enter into a similar termination agreement with the provider of such water, subject to any required approval of such agreement by the Public Service Commission of West Virginia and all rules, regulations and orders of the Public Service Commission of West Virginia.

Section 6.14. No Free Services. The Issuer will not render or cause to be rendered any free services of any nature by the System, nor will any preferential rates be established for users of the same class; and in the event the Issuer, or any department, agency, instrumentality, officer or employee of the Issuer shall avail itself or themselves of the facilities or services provided by the System, or any part thereof, the same rates, fees or charges applicable to other customers

receiving like services under similar circumstances shall be charged the Issuer and any such department, agency, instrumentality, officer or employee. The revenues so received shall be deemed to be revenues derived from the operation of the System, and shall be deposited and accounted for in the same manner as other revenues derived from such operation of the System.

Section 6.15. Insurance and Construction Bonds. A. The Issuer hereby covenants and agrees that so long as any of the Bonds remain Outstanding, the Issuer will, as an Operating Expense, procure, carry and maintain insurance with a reputable insurance carrier or carriers as is customarily covered with respect to works and properties similar to the System. Such insurance shall initially cover the following risks and be in the following amounts:

(1) FIRE, LIGHTNING, VANDALISM, MALICIOUS MISCHIEF AND EXTENDED COVERAGE INSURANCE, on all above-ground insurable portions of the System in an amount equal to the actual cost thereof. In time of war the Issuer will also carry and maintain insurance to the extent available against the risks and hazards of war. The proceeds of all such insurance policies shall be placed in the Renewal and Replacement Fund and used only for the repairs and restoration of the damaged or destroyed properties or for the other purposes provided herein for said Renewal and Replacement Fund. The Issuer will itself, or will require each contractor and subcontractor to, obtain and maintain builder's risk insurance (fire and extended coverage) to protect the interests of the Issuer, the Authority, the Bank, the prime contractor and all subcontractors as their respective interests may appear, in accordance with the Loan Agreement, during construction of the Project on a 100% basis (completed value form) on the insurable portion of the Project, such insurance to be made payable to the order of the Authority, the Issuer, the Bank, the contractors and subcontractors, as their interests may appear.

(2) PUBLIC LIABILITY INSURANCE, with limits of not less than \$1,000,000 per occurrence to protect the Issuer from claims for bodily injury and/or death and not less than \$100,000 per occurrence from claims for damage to property of others which may arise from the operation of the System, and insurance with the same limits to protect the Issuer from claims arising out of operation or ownership of motor vehicles of or for the System.

(3) WORKER'S COMPENSATION COVERAGE FOR ALL EMPLOYEES OF OR FOR THE SYSTEM ELIGIBLE THEREFOR; AND PERFORMANCE AND PAYMENT BONDS, such bonds to be in the amounts of 100% of the construction contract and to be required of each contractor contracting directly with the Issuer, and such payment bonds will be filed with the Clerk of The County Commission of the County in which such work is to be performed prior to commencement of construction of the Project in compliance with West Virginia Code, Chapter 38, Article 2, Section 39.

(4) FLOOD INSURANCE, to the extent available at reasonable cost to the Issuer.

(5) BUSINESS INTERRUPTION INSURANCE, to the extent available at reasonable cost to the Issuer.

(6) FIDELITY BONDS will be provided as to every officer, member and employee of the Issuer or the Governing Body having custody of the revenues or of any other funds of the

System, in an amount at least equal to the total funds in the custody of any such person at any one time.

B. The Issuer shall also require all contractors engaged in the construction of the Project to carry such workers compensation coverage for all employees working on the Project and public liability insurance, vehicular liability insurance and property damage insurance in amounts adequate for such purposes and as is customarily carried with respect to works and properties similar to the Project, provided that the amounts and terms of such coverage are satisfactory to the Authority. In the event the Loan Agreement so requires, such insurance shall be made payable to the order of the Authority, the Council, the Issuer, the prime contractor and all subcontractors, as their interests may appear.

The Issuer shall require all contractors engaged in the construction of the Project to furnish a performance bond and a payment bond, each in an amount at least equal to 100% of the contract price of the portion of the Project covered by the particular contract as security for the faithful performance of such contract.

Section 6.16. Completion of Project. The Issuer will complete the Project as promptly as possible and operate and maintain the System in good condition and in compliance with all federal and state requirements and standards.

The Issuer will obtain all permits required by state and federal laws for the acquisition and construction of the Project, and all orders and approvals from the Public Service Commission of West Virginia necessary for the acquisition and construction of the Project and the operation of the System.

Section 6.17. Tax Covenants. The Issuer hereby further covenants and agrees as follows:

A. PRIVATE BUSINESS USE LIMITATION. The Issuer shall assure that (i) not in excess of 10% of the Net Proceeds of the Bonds are used for Private Business Use if, in addition, the payment of more than 10% of the principal or 10% of the interest due on the Bonds during the term thereof is, under the terms of the Bonds or any underlying arrangement, directly or indirectly, secured by any interest in property used or to be used for a Private Business Use or in payments in respect of property used or to be used for a Private Business Use or is to be derived from payments, whether or not to the Issuer, in respect of property or borrowed money used or to be used for a Private Business Use; and (ii) and that, in the event that both (A) in excess of 5% of the Net Proceeds of the Bonds are used for a Private Business Use, and (B) an amount in excess of 5% of the principal or 5% of the interest due on the Bonds during the term thereof is, under the terms of the Bonds or any underlying arrangement, directly or indirectly, secured by any interest in property used or to be used for said Private Business Use or in payments in respect of property used or to be used for said Private Business Use or is to be derived from payments, whether or not to the Issuer, in respect of property or borrowed money used or to be used for said Private Business Use, then said excess over said 5% of Net Proceeds of the Bonds used for a Private Business Use shall be used for a Private Business Use related to the governmental use of the Project, or if the Bonds are for the purpose of financing more than one project, a portion of

the Project, and shall not exceed the proceeds used for the governmental use of that portion of the Project to which such Private Business Use is related.

B. PRIVATE LOAN LIMITATION. The Issuer shall assure that not in excess of 5% of the Net Proceeds of the Bonds are used, directly or indirectly, to make or finance a loan (other than loans constituting Nonpurpose Investments) to persons other than state or local government units.

C. FEDERAL GUARANTEE PROHIBITION. The Issuer shall not take any action or permit or suffer any action to be taken if the result of the same would be to cause the Bonds to be "federally guaranteed" within the meaning of Section 149(b) of the Code and Regulations promulgated thereunder.

D. INFORMATION RETURN. The Issuer will file all statements, instruments and returns necessary to assure the tax-exempt status of the Bonds and the interest thereon, including without limitation, the information return required under Section 149(e) of the Code.

E. FURTHER ACTIONS. The Issuer will take any and all actions that may be required of it (including those deemed necessary by the Authority) so that the interest on the Bonds will be and remain excludable from gross income for federal income tax purposes, and will not take any actions, or fail to take any actions (including those determined by the Authority) which would adversely affect such exclusion.

Section 6.18. Mandatory Connections. To the extent permitted by the laws of the State of West Virginia and the rules and regulations of the Public Service Commission of West Virginia, the Issuer shall require every owner, tenant or occupant of any house, dwelling or building intended to be served by the System to connect thereto.

Section 6.19. Compliance with Loan Agreement and Law. The Issuer agrees to comply with all the terms and conditions of the Loan Agreement. Notwithstanding anything herein to the contrary, the Issuer will provide the Council with copies of all documents submitted to the Authority.

The Issuer also agrees to comply with all applicable laws, rules and regulations issued by the Authority, the Council or other State, federal or local bodies in regard to the acquisition and construction of the Project and the operation, maintenance and use of the System.

## ARTICLE VII

### INVESTMENT OF FUNDS; NON ARBITRAGE

Section 7.01. Investments. Any moneys held as a part of the funds and accounts created by this Bond Legislation, other than the Revenue Fund, shall be invested and reinvested by the Commission, the Depository Bank, or such other bank or national banking association holding such fund or account, as the case may be, at the written direction of the Issuer in any Qualified Investments to the fullest extent possible under applicable laws, this Bond Legislation,

the need for such moneys for the purposes set forth herein and the specific restrictions and provisions set forth in this Section 7.01.

Any investment shall be held in and at all times deemed a part of the fund or account in which such moneys were originally held, and the interest accruing thereon and any profit or loss realized from such investment shall be credited or charged to the appropriate fund or account. The investments held for any fund or account shall be valued at the lower of cost or then current market value, or at the redemption price thereof if then redeemable at the option of the holder, including the value of accrued interest and giving effect to the amortization of discount, or at par if such investment is held in the "Consolidated Fund." The Commission, the Depository Bank or such other bank or national banking association, as the case may be, shall sell and reduce to cash a sufficient amount of such investments whenever the cash balance in any fund or account is insufficient to make the payments required from such fund or account, regardless of the loss on such liquidation. The Depository Bank or such other bank or national banking association, as the case may be, may make any and all investments permitted by this section through its own bond department and shall not be responsible for any losses from such investments, other than for its own negligence or willful misconduct.

The Depository Bank shall keep complete and accurate records of all funds, accounts and investments, and shall distribute to the Issuer, at least once each year, a summary of such funds, accounts and investment earnings. The Issuer shall retain all such records and any additional records with respect to such funds, accounts and investment earnings so long as any of the Bonds are Outstanding.

Section 7.02. Arbitrage. The Issuer covenants that (i) it will restrict the use of the proceeds of the Bonds in such manner and to such extent as may be necessary, in view of the Issuer's reasonable expectations at the time of issuance of the Bonds, so that the Bonds will not constitute "arbitrage bonds" under Section 148 of the Code and Regulations, and (ii) it will take all actions that may be required of it (including, without implied limitation, the timely filing of a Federal information return with respect to the Bonds) so that the interest on the Bonds will be and remain excluded from gross income for Federal income tax purposes, and will not take any actions which would adversely affect such exclusion.

Section 7.03. Rebate of Excess Investment Earnings to the United States. In accordance with Section 148(f)(4)(C) of the Code, the Issuer covenants that it is a governmental unit with general taxing powers; that the Bonds are not private activity bonds as defined in Section 141 of the Code; that 95% or more of the Net Proceeds of the Bonds are to be used for local governmental activities of the Issuer (or of a governmental unit the jurisdiction of which is entirely within the jurisdiction of the Issuer); and that the aggregate face amount of all the tax-exempt obligations (other than private activity bonds as defined in Section 141 of the Code) issued by the Issuer during the calendar year in which the Bonds are issued will not exceed \$5,000,000, determined in accordance with Section 148(f)(4)(C) of the Code and the Regulations promulgated thereunder. For purposes of this Section 7.03 and for purposes of applying Section 148(f)(4)(C) of the Code, the Issuer and all entities which issue obligations on behalf of the Issuer shall be treated as one issuer; all obligations issued by a subordinate entity shall, for purposes of applying this Section 7.03 and Section 148(f)(4)(C) of the Code to any other entity to

which such entity is subordinate, be treated as issued by such other entity; and an entity formed (or, to the extent provided by the Secretary, as set forth in the Code, availed of) to avoid the purposes of such Section 148(f)(4)(C) of the Code and all other entities benefiting thereby shall be treated as one issuer.

Notwithstanding the foregoing, if in fact the Issuer is subject to the rebate requirements of Section 148(f) of the Code, and not exempted from such requirements, the Issuer shall take the following actions:

A. CREATION OF FUNDS. There are hereby created, to be held by the Depository Bank as separate funds distinct from all other funds and accounts held by the Depository Bank under this Bond Legislation, the Earnings Fund and the Rebate Fund. All interest earnings and profits on amounts in all funds and accounts established under this Bond Legislation, other than (i) interest earnings and profits on any funds referenced in Subsection C(5) of this Section if such earnings in any Bond Year are less than \$100,000, (ii) interest earnings and profits on amounts in funds and accounts which do not constitute Gross Proceeds, and (iii) interest earnings and profits on the Rebate Fund shall, upon receipt by the Depository Bank, be deposited in the Earnings Fund. In addition, all interest earnings and profits on Gross Proceeds in funds held by the Issuer shall, upon receipt, be paid to the Depository Bank for deposit in the Earnings Fund. Annually, on or before the 30th day following the end of each Bond Year or on the preceding business day in the event that such last day is not a business day, or such earlier date as may be required under the Code, the Depository Bank shall transfer from the Earnings Fund to the Rebate Fund for purposes of ultimate payment to the United States an amount equal to Excess Investment Earnings, all as more particularly described in this Section. Following the transfer referenced in the preceding sentence, the Depository Bank shall transfer all amounts remaining in the Earnings Fund to be used for the payment of Debt Service on the next interest payment date and for such purpose, Debt Service due from the Issuer on such date shall be credited by an amount equal to the amount so transferred.

B. DUTIES OF ISSUER IN GENERAL. The Issuer shall calculate Excess Investment Earnings in accordance with Subsection C and shall assure payment of an amount equal to Excess Investment Earnings to the United States in accordance with Subsections D and E.

C. CALCULATION OF EXCESS INVESTMENT EARNINGS. Within 15 days following the last day of the first Bond Year, the Issuer shall calculate, and shall provide written notice to the Authority and Depository Bank of, the Excess Investment Earnings referenced in clause (A) of the definition of Excess Investment Earnings. Thereafter, within 15 days following the last day of each Bond Year and within 15 days following the date of the retirement of the Bond, the Issuer shall calculate, and shall provide written notice to the Authority and Depository Bank of, the amount of Excess Investment Earnings. Said calculations shall be made or caused to be made by the Issuer in accordance with the following:

(1) Except as provided in (2), in determining the amount described in clause A(i) the definition of Excess Investment Earnings, the aggregate amount earned on Nonpurpose Investments shall include (i) all income realized under federal income tax accounting principles (whether or not the person earning such income is subject to federal income tax) with respect to

such Nonpurpose Investments and with respect to the reinvestment of investment receipts from such Nonpurpose Investments (without regard to the transaction costs incurred in acquiring, carrying, selling or redeeming such Nonpurpose Investments), including, but not limited to, gain or loss realized on the disposition of such Nonpurpose Investments (without regard to when such gains are taken into account under Section 453 of the Code relating to taxable year of inclusion of gross income), and income under Section 1272 of the Code (relating to original issue discount) and (ii) any unrealized gain or loss as of the date of retirement of the Bonds in the event that any Nonpurpose Investment is retained after such date.

(2) In determining the amount described in clause (A) of the definition of Excess Investment Earnings, Investment Property shall be treated as acquired for its fair market value at the time it becomes a Nonpurpose Investment, so that gain or loss on the disposition of such Investment Property shall be computed with reference to such fair market value as its adjusted basis.

(3) In determining the amount described in clause (A)(ii) of the definition of Excess Investment Earnings, the Yield on the Bonds shall be determined based on the actual Yield of the Bonds during the period between the Closing Date of the Bonds and the date the computation is made (with adjustments for original issue discount or premium).

(4) In determining the amount described in clause (B) of the definition of Excess Investment Earnings, all income attributable to the excess described in clause (A) of said definition must be taken into account, whether or not that income exceeds the Yield of the Bond, and no amount may be treated as "negative arbitrage."

(5) In determining the amount of Excess Investment Earnings, there shall be excluded any amount earned on any fund or account which is used primarily to achieve a proper matching of revenues and Debt Service within each Bond Year and which is depleted at least once a year except for a reasonable carryover amount not in excess of the greater of 1 year's earnings on such fund or account or 1/12th of annual Debt Service as well as amounts earned on said earnings if the gross earnings on such fund or account for the Bond Year is less than \$100,000.

D. PAYMENT TO THE UNITED STATES. The Issuer shall direct the Depository Bank to pay from the Rebate Fund an amount equal to Excess Investment Earnings to the United States in installments with the first payment to be made not later than 30 days after the end of the 5th Bond Year and with subsequent payments to be made not later than 5 years after the preceding payment was due. The Issuer shall assure that each such installment is in an amount equal to at least 90% of the Excess Investment Earnings with respect to the Gross Proceeds as of the close of the computation period. Not later than 60 days after the retirement of the Bonds, the Issuer shall direct the Depository Bank to pay from the Rebate Fund to the United States 100% of the theretofore unpaid Excess Investment Earnings in the Rebate Fund. In the event that there are any amounts remaining in the Rebate Fund following the payment required by the preceding sentence, the Depository Bank shall pay said amounts to the Issuer to be used for any lawful purpose of the System. The Issuer shall remit payments to the United States at the address prescribed by the Regulations as the same may be in time to time in effect with such reports and statements as may be prescribed by such Regulations. In the event that, for any reason, amounts

in the Rebate Fund are insufficient to make the payments to the United States which are required by this Subsection D, the Issuer shall assure that such payments are made by the Issuer to the United States, on a timely basis, from any funds lawfully available therefor.

In the event of a failure to pay any such amount or amounts, the Issuer will pay, from any lawful sources available therefor, to the United States, an amount equal to the sum of 50% of the amount not paid, plus interest at the required rate on the portion of the amount which was not paid on the required date, beginning on such date, unless waived.

E. FURTHER OBLIGATIONS OF ISSUER. The Issuer shall assure that Excess Investment Earnings are not paid or disbursed except as required in this Section. To that end the Issuer shall assure that investment transactions are on an arm's length basis and that Nonpurpose Investments are acquired at their fair market value. In the event that Nonpurpose Investments consist of certificates of deposit or investment contracts, investment in such Nonpurpose Investments shall be made in accordance with the procedures described in applicable Regulations as from time to time in effect. The Depository Bank shall keep the moneys in the Earnings Fund and Rebate Fund invested and reinvested to the fullest extent practicable in Government Obligations with maturities consonant with the required use thereof and investment profits and earnings shall be credited to the account of such fund on which earned.

F. MAINTENANCE OF RECORDS. The Issuer shall keep and retain for a period of 6 years following the retirement of the Bonds, records of the determinations made pursuant to this Section 7.03.

G. INDEPENDENT CONSULTANTS. In order to provide for the administration of this Section 7.03, the Issuer and the Depository Bank (at the expense of the Issuer) may provide for the employment of independent attorneys, accountants or consultants compensated on such reasonable basis as the Issuer or the Depository Bank may deem appropriate.

H. FURTHER AGREEMENT. Notwithstanding the foregoing, the Issuer further covenants to comply with all Regulations from time to time in effect and applicable to the Bonds, as may be necessary in order to fully comply with Section 148(f) of the Code.

I. REPORTING TO AUTHORITY. The Issuer shall furnish to the Authority, annually, at such time as it is required to perform its rebate calculations under the Code, a certificate with respect to its rebate calculations and, at any time, any additional information relating thereto as may be requested by the Authority, including, without limitation, information with respect to earnings on all funds constituting "gross proceeds" of the Series 1997 A Bonds (as such term "gross proceeds" is defined in the Code). In addition, the Issuer shall cooperate with the authority in preparing rebate calculations and in all other respects in connection with rebates and hereby consents to the performance of all matters in connection with such rebates by the Authority at the expense of the Issuer.

Section 7.04. Securities Laws Compliance. The Issuer will provide the Authority, in a timely manner, with any and all information that may be requested of it (including its annual report, financial statements, related information and notices of changes in usage and customer

base) so that the Authority may comply with the provisions of SEC Rule 15c2-12 (17 CFR Part 240).

## ARTICLE VIII

### DEFAULT AND REMEDIES

Section 8.01. Events of Default. Each of the following events shall constitute an "Event of Default" with respect to the Bonds:

(1) If default occurs in the due and punctual payment of the principal of or interest on the Bonds; or

(2) If default occurs in the Issuer's observance of any of the covenants, agreements or conditions on its part relating to the Series 1997 A Bonds set forth in this Bond Legislation, any supplemental resolution or in the Bonds, and such default shall have continued for a period of 30 days after the Issuer shall have been given written notice of such default by the Commission, the Depository Bank, Registrar or any other Paying Agent or a Holder of a Bond; or

(3) If the Issuer files a petition seeking reorganization or arrangement under the federal bankruptcy laws or any other applicable law of the United States of America.

Section 8.02. Remedies. Upon the happening and continuance of any Event of Default, any Registered Owner of a Bond may exercise any available remedy and bring any appropriate action, suit or proceeding to enforce his or her rights and, in particular, (i) bring suit for any unpaid principal or interest then due, (ii) by mandamus or other appropriate proceeding enforce all rights of such Registered Owners including the right to require the Issuer to perform its duties under the Act and the Bond Legislation relating thereto, including but not limited to the making and collection of sufficient rates or charges for services rendered by the System, (iii) bring suit upon the Bonds, (iv) by action at law or bill in equity require the Issuer to account as if it were the trustee of an express trust for the Registered Owners of the Bonds, and (v) by action or bill in equity enjoin any acts in violation of the Bond Legislation with respect to the Bonds, or the rights of such Registered Owners.

Section 8.03. Appointment of Receiver. Any Registered Owner of a Bond may, by proper legal action, compel the performance of the duties of the Issuer under the Bond Legislation and the Act, including, after commencement of operation of the System, the making and collection of sufficient rates and charges for services rendered by the System and segregation of the revenues therefrom and the application thereof. If there be any Event of Default with respect to such Bonds any Registered Owner of a Bond shall, in addition to all other remedies or rights, have the right by appropriate legal proceedings to obtain the appointment of a receiver to administer the System or to complete the acquisition and construction of the Project on behalf of the Issuer with power to charge rates, rentals, fees and other charges sufficient to provide for the payment of Operating Expenses of the System, the payment of the Bonds and interest and the

deposits into the funds and accounts hereby established, and to apply such rates, rentals, fees, charges or other revenues in conformity with the provisions of this Bond Legislation and the Act.

The receiver so appointed shall forthwith, directly or by his or her or its agents and attorneys, enter into and upon and take possession of all facilities of said System and shall hold, operate and maintain, manage and control such facilities, and each and every part thereof, and in the name of the Issuer exercise all the rights and powers of the Issuer with respect to said facilities as the Issuer itself might do.

Whenever all that is due upon the Bonds and interest thereon and under any covenants of this Bond Legislation for Reserve, Sinking or other funds and upon any other obligations and interest thereon having a charge, lien or encumbrance upon the revenues of the System shall have been paid and made good, and all defaults under the provisions of this Bond Legislation shall have been cured and made good, possession of the System shall be surrendered to the Issuer upon the entry of an order of the court to that effect. Upon any subsequent default, any Registered Owner of any Bonds shall have the same right to secure the further appointment of a receiver upon any such subsequent default.

Such receiver, in the performance of the powers hereinabove conferred upon him or her or it, shall be under the direction and supervision of the court making such appointment, shall at all times be subject to the orders and decrees of such court and may be removed thereby, and a successor receiver may be appointed in the discretion of such court. Nothing herein contained shall limit or restrict the jurisdiction of such court to enter such other and further orders and decrees as such court may deem necessary or appropriate for the exercise by the receiver of any function not specifically set forth herein.

Any receiver appointed as provided herein shall hold and operate the System in the name of the Issuer and for the joint protection and benefit of the Issuer and Registered Owners of the Bonds. Such receiver shall have no power to sell, assign, mortgage or otherwise dispose of any assets of any kind or character belonging or pertaining to the System, but the authority of such receiver shall be limited to the possession, operation and maintenance of the System for the sole purpose of the protection of both the Issuer and Registered Owners of such Bonds and the curing and making good of any Event of Default with respect thereto under the provisions of this Bond Legislation, and the title to and ownership of said System shall remain in the Issuer, and no court shall have any jurisdiction to enter any order or decree permitting or requiring such receiver to sell, assign, mortgage or otherwise dispose of any assets of the System.

## ARTICLE IX

### DEFEASANCE

Section 9.01. Defeasance of Series 1997 A Bonds. If the Issuer shall pay or cause to be paid, or there shall otherwise be paid, to the respective Holders of all Series 1997 A Bonds, the principal of and interest due or to become due thereon, at the times and in the manner stipulated therein and in this Bond Legislation, then with respect to the Series 1997 A Bonds only, the pledge of Net Revenues and other moneys and securities pledged under this Bond Legislation

and all covenants, agreements and other obligations of the Issuer to the Registered Owners of the Series 1997 A Bonds shall thereupon cease, terminate and become void and be discharged and satisfied.

Series 1997 A Bonds for the payment of which either moneys in an amount which shall be sufficient, or securities the principal of and the interest on which, when due, will provide moneys which, together with the moneys, if any, deposited with the Paying Agents at the same or earlier time, shall be sufficient, to pay as and when due either at maturity or at the next redemption date, the principal installments of and interest on such Series 1997 A Bonds shall be deemed to have been paid within the meaning and with the effect expressed in the first paragraph of this section. All Series 1997 A Bonds shall, prior to the maturity thereof, be deemed to have been paid within the meaning and with the effect expressed in the first paragraph of this section if there shall have been deposited with the Commission or its agent, either moneys in an amount which shall be sufficient, or securities the principal of and the interest on which, when due, will provide moneys which, together with other moneys, if any, deposited with the Commission at the same time, shall be sufficient to pay when due the principal installments of and interest due and to become due on said Series 1997 A Bonds on and prior to the next redemption date or the maturity dates thereof. Neither securities nor moneys deposited with the Commission pursuant to this section nor principal or interest payments on any such securities shall be withdrawn or used for any purpose other than, and shall be held in trust for, the payment of the principal installments of and interest on said Series 1997 A Bonds; provided, that any cash received from such principal or interest payments on such securities deposited with the Commission or its agent, if not then needed for such purpose, shall, to the extent practicable, be reinvested in securities maturing at times and in amounts sufficient to pay when due the principal installments of and interest to become due on said Bonds on and prior to the next redemption date or the maturity dates thereof, and interest earned from such reinvestments shall be paid over to the Issuer as received by the Commission or its agent, free and clear of any trust, lien or pledge. For the purpose of this section, securities shall mean and include only Government Obligations.

## ARTICLE X

### MISCELLANEOUS

Section 10.01. Amendment or Modification of Bond Legislation. No material modification or amendment of this Bond Legislation, or of any resolution amendatory or supplemental hereto, that would materially and adversely affect the respective rights of Registered Owners of the Bonds shall be made without the consent in writing of the Registered Owners of 66-2/3% or more in principal amount of the Series 1997 A Bonds so affected and then Outstanding; provided, that no change shall be made in the maturity of any Bond or Bonds or the rate of interest thereon, or in the principal amount thereof, or affecting the unconditional promise of the Issuer to pay such principal and interest out of the funds herein respectively pledged therefor without the consent of the respective Registered Owner thereof. No amendment or modification shall be made that would reduce the percentage of the principal amount of Bonds required for consent to the above-permitted amendments or modifications. Notwithstanding the foregoing, this Bond Legislation may be amended without the consent of any Bondholder as may be necessary to assure compliance with Section 148(f) of the Code relating to rebate

requirements or otherwise as may be necessary to assure the excludability of interest on the Bonds from gross income of the holders thereof.

Section 10.02. Bond Legislation Constitutes Contract. The provisions of the Bond Legislation shall constitute a contract between the Issuer and the Registered Owners of the Bonds, and no change, variation or alteration of any kind of the provisions of the Bond Legislation shall be made in any manner, except as in this Bond Legislation provided.

Section 10.03. Severability of Invalid Provisions. If any section, paragraph, clause or provision of this Ordinance should be held invalid by any court of competent jurisdiction, the invalidity of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance, the Supplemental Resolution or the Bonds.

Section 10.04. Headings, Etc. The headings and catchlines of the articles, sections and subsections hereof are for convenience of reference only, and shall not affect in any way the meaning or interpretation of any provision hereof.

Section 10.05. Conflicting Provisions Repealed. All ordinances, orders or resolutions and or parts thereof in conflict with the provisions of this Ordinance are, to the extent of such conflict, hereby repealed.

Section 10.06. Covenant of Due Procedure, Etc. The Issuer covenants that all acts, conditions, things and procedures required to exist, to happen, to be performed or to be taken precedent to and in the enactment of this Ordinance do exist, have happened, have been performed and have been taken in regular and due time, form and manner as required by and in full compliance with the laws and Constitution of the State of West Virginia applicable thereto; and that the Mayor, Recorder and members of the Governing Body were at all times when any actions in connection with this Ordinance occurred and are duly in office and duly qualified for such office.

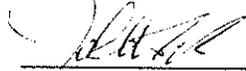
Section 10.07. Effective Date. This Ordinance shall take effect immediately following public hearing hereon.

Section 10.08. Statutory Notice and Public Hearing. Upon adoption hereof, an abstract of this Bond Legislation determined by the Governing Body to contain sufficient information as to give notice of the contents hereof shall be published once a week for 2 successive weeks within a period of fourteen consecutive days, with at least 6 full days intervening between each publication, in the Nicholas Chronicle, which is a qualified newspaper of general circulation in The City of Summersville, together with a notice stating that this Bond Legislation has been adopted and that the Issuer contemplates the issuance of the Bonds, and that any person interested may appear before the City Council upon a date certain, not less than ten days subsequent to the date of the first publication of the abstract and notice, and present protests, and that a certified copy of the Ordinance is on file with the Governing Body for review by interested persons during office hours of the Governing Body. At such hearing, all objections and suggestions shall be heard and the Governing Body shall take such action as it shall deem proper in the premises.

Passed on First Reading - July 28, 1997

Passed on Second Reading - August 11, 1997

Effective Date Following  
Public Hearing - August 25, 1997



Mayor



Recorder

## LEGAL NOTICES

### ABSTRACT OF ORDINANCE AND NOTICE OF PUBLIC HEARING

Notice is hereby given to any person interested that on August 11, 1997, the Council (the "Council") of the City of Summersville, West Virginia (the "City"), adopted an Ordinance that:

1. Determined that the City now owns and operates a public water and sewer treatment, distribution, collection, transportation and treatment system ("the System").

2. Determined that it is necessary for the City to issue its Water and Sewer Revenue Bonds, Series 1997 A in the amount not to exceed \$700,000.00, in order to provide funds to pay the costs of certain additions, improvements and betterments to the System, consisting of the Glade Creek extension project, to refinance or reimburse the City for certain costs previously expended and to pay the costs of issuing the bonds.

3. Provided for the sale of the Series 1997 A Bonds to the West Virginia Water Development Authority pursuant to the terms and provisions of a loan agreement and as established by the Ordinance and in a supplemental resolution of Council.

4. Directed that the Series 1997 A Bonds be dated their date of issuance, shall bear interest, mature and shall contain such other terms, provisions, conditions and limitations as provided by the Ordinance and prescribed by supplemental resolution of Council; that the Bonds be executed in the name of the City by the Mayor and the seal of the City be affixed thereto and attested to by the City Recorder, and that said Bonds be duly authenticated by the registrar.

5. Provided for the monthly payment of principal and interest on the Series 1997 A Bonds; provided for the creation of a sinking fund for the Series 1997 A Bonds.

6. Provided for the disposition of bond proceeds; created a construction fund, a revenue fund and a reserve fund for the Series 1997 A Bonds.

7. Provided that the Series 1997 A Bonds shall not be or constitute an indebtedness of the City within the meaning of any constitutional, statutory or charter limitation of indebtedness, but shall be payable solely from the revenues of the System.

8. Provided that the 1997 Series A Bonds will be secured by a first lien on the net revenues of the System, with first lien shall be shared with the City's 1987 Water and Sewer Note, the 1990 Series A Bonds and the 1991 Series A Bonds presently outstanding.

9. Provided that the rates and charges for the System shall always be sufficient to produce gross revenues to pay operating expenses and make payments into the funds and accounts created in the Ordinance and leave a balance each year equal to at least 115% of the average annual debt service on the 1997 Series A Bonds and all obligations of the City payable from revenues of the System, unless the 1997 Series A Bonds Reserve Fund are fully funded, in which case, the debt service coverage may be reduced to 110%.

10. Provided that the System may be sold, transferred, mortgaged or leased under certain terms and conditions; provided that the issuance of additional bonds on a parity with the Bonds may be authorized under certain terms and conditions.

11. Provided for insurance coverage on the System, provided that the City will render no free service; provided for the enforcement of collection of fees, rates, rentals or other charges for service; provided for mandatory connections under certain circumstances, and provided for the discontinuance of service for non-payment of the fees, rates, rentals and other charges of the System.

12. Established that terms for defaults and the remedies of the owners of the Series 1997 A Bonds; provided for the security for and the rights and remedies of the owners of the Series 1997 A Bonds including the appointment of a receiver.

13. provided that the City will take all actions that may be required of it so that the interest on the Series 1997 A Bonds will be and remain excluded from gross income for federal income tax purpose.

The City of Summersville contemplates the issuance of the Series 1997 A Bonds described in, and under the conditions set forth in, the Ordinance abstracted above. Any person interested may appear before the Council of the City of Summersville at a meeting thereof at 7:30 o'clock p.m. EST on August 25, 1997, in the City Hall, 400 North Broad Street, in the City of Summersville, West Virginia, and present protests and be heard as to whether the Ordinance shall be put into effect. At said hearing all objections and suggestions shall be heard and the Council shall take such action as it shall deem proper in the premises.

A certified copy of the Ordinance as adopted by the Council of the City on August 11, 1997, is on file in the office of the City Recorder for review by interested persons during the regular office hours of such office.

Ron Hancock  
Recorder, City of Summersville, W.Va.  
8/11/97 21 21

# The Nicholas Chronicle

P.O. BOX 503  
SUMMERSVILLE, WV 26651  
(304) 872-2251

I, Matthew R. Yeager, Managing Editor of The Nicholas Chronicle, a weekly newspaper published at Summersville in the County of Nicholas, and the State of West Virginia, do certify that the hereto attached

Legal Advertisement - City of Summersville, P.O. Box 525, Summersville, WV 26651; ABSTRACT OF ORDINANCE AND NOTICE OF PUBLIC HEARING.

appeared in said newspaper for 2 weeks, published on the 14th day of August, 1997; and the 21st day of August, 1997.

Given under my hand this 21<sup>st</sup> day of August, 1997.

By Matthew R. Yeager, Managing Editor.

Fee for publication:

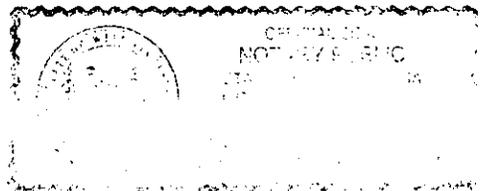
862 words @ \$.07 per word, \$60.34, for the first publication; 75% of first publication, \$45.26, for all subsequent publications; for a total cost of \$105.60.

The foregoing instrument was acknowledged before me this the 21st day of August, 1997.

Brenda K. Shifers

Notary Public

My commission expires March 10, 2002.



CITY OF SUMMERSVILLE  
400 NORTH BROAD STREET  
P.O. BOX 525  
SUMMERSVILLE, WEST VIRGINIA 26651

JOHN STEVEN LEROSE - MAYOR

TELEPHONE (304) 872-1211  
TELECOPY (304) 872-2236

Regular Meeting of Summersville City  
Council held on July 28, 1997

PRESENT: John Steven LeRose, Mayor  
Ron E. Hancock, Recorder  
Mary McCallister, Councilwoman Ward I  
Terry Lewis, Councilman Ward I  
Joe Pugh, Councilman Ward II  
Fred Fogleman, Councilman Ward III  
C. T. Lay, Councilman Ward III  
Mike Hughes, Councilman Ward IV  
Donna Mazzei, Councilwoman Ward IV

VISITORS: Captain Curt Persinger  
Bob Hilleary, Waste Water Superintendent  
Lee Chapman  
John Manning, Red Cross

Mayor LeRose called the Council Meeting to order at 7:30 p.m.

A motion was made to approve, as presented, the Minutes of the Regular Meeting of City Council held on July 14, 1997. Moved by Terry Lewis.

Seconded by Joe Pugh.

Motion carried unanimously.

Council discussed Budget Revision No. 01 of the General Fund Budget for FY 1997/1998. A motion was made to approve Budget Revision No. 01, as presented, with an increase in revenue of \$26,868.00 and an increase in expenditures of \$26,868.00. Moved by Fred Fogleman.

Seconded by C. T. Lay.

Motion carried unanimously.

A motion was made to approve the Planning and Zoning Commission's recommendation to grant a rear set-back waiver for Craig and Lee Chapman for lot 41 at the corner of Nelson Avenue and Vaughan Avenue. The waiver will allow for the rear

of the house to be 22 foot from the property line instead of the required 40 foot. Moved by Mike Hughes.

Seconded by Donna Mazzei.

Motion carried unanimously.

Council held the first reading of the amendment to the Criminal Code Ordinance (Speed Restriction Code). This will amend the Penalty Code Section 107.99. This amendment will bring the City's Code into compliance with State Code. Passed on first reading and moved to second reading on August 11, 1997. Moved by Mary McCallister.

Seconded by Fred Fogleman.

Motion carried unanimously.

Council held the first reading to adopt an Ordinance - Invasion of Privacy by Looking and to revise the Criminal Code to include Section 203.06 Invasion of Privacy by Looking. Passed on first reading and moved to second reading on August 11, 1997. Moved by Donna Mazzei.

Seconded by Fred Fogleman.

Motion carried unanimously.

Council held the first reading of the Bond Ordinance for the Water and Sewer Revenue Bonds Series 1997 for the Glade Creek Water Project. Motion approved on first reading and moved to second reading on August 11, 1997. Moved by Fred Fogleman.

Seconded by Donna Mazzei.

Motion carried unanimously.

Mayor LeRose read a letter commending Cpl. Leslie Bailey for his assistance and kindness when their vehicle broke down while traveling through Summersville.

A motion to adjourn the meeting was made at 8:15 p.m. Moved by Joe Pugh.

Seconded by Mary McCallister.

Motion carried unanimously.

CITY OF SUMMERSVILLE  
400 NORTH BROAD STREET  
P.O. BOX 525  
SUMMERSVILLE, WEST VIRGINIA 26651

JOHN STEVEN LEROSE - MAYOR

TELEPHONE (304) 872-1211  
TELECOPY (304) 872-2236

Regular Meeting of Summersville City  
Council held on August 11, 1997

PRESENT: John Steven LeRose, Mayor  
Ron E. Hancock, Recorder  
Mary McCallister, Councilwoman Ward I  
Terry Lewis, Councilman Ward I  
Joe Pugh, Councilman Ward II  
Fred Fogleman, Councilman Ward III  
C. T. Lay, Councilman Ward III  
Donna Mazzei, Councilwoman Ward IV

ABSENT: Mike Hughes, Councilman Ward IV

VISITORS: Garry Evans, Chief  
Bob Hilleary, Waste Water Superintendent  
Mike Steadham  
Patricia Steadham  
David Steadham

Mayor LeRose called the Council Meeting to order at 7:30 p.m.

A motion was made to approve, as presented, the Minutes of the Regular Meeting of City Council held on July 28, 1997. Moved by Joe Pugh.

Seconded by Terry Lewis.  
Motion carried unanimously.

Chief Evans presented David Steadham from Summersville Junior High School a check for \$300.00 in recognition for his 3rd place award in the statewide essay contest sponsored by the WV Chiefs of Police Association.

Council discussed problems created from banners being displayed on power poles. Some of the banners have created a dangerous situation during high winds. A motion was made to place a moratorium on hanging banners in the City until an alternative solution can be found. Moved by C. T. Lay.

Seconded by Mary McCallister.

Motion carried unanimously.

Council held the second reading of the amendment to the Criminal Code Ordinance (Speed Restriction Code). This will amend the Penalty Code Section 107.99. This amendment will bring the City's Code into compliance with State Code. Adopted on second reading and passage effective at 12:01 a.m. on August 12, 1997. Moved by C.T. Lay.

Seconded by Donna Mazzei.

Motion carried unanimously.

Council held the second reading to adopt an Ordinance - Invasion of Privacy by Looking and to revise the Criminal Code to include Section 203.06 Invasion of Privacy by Looking. Adopted on second reading and passage effective at 12:01 a.m. on August 12, 1997. Moved by Donna Mazzei.

Seconded by Fred Fogleman.

Motion carried unanimously.

Council held the second reading of the Bond Ordinance for the Water and Sewer Revenue Bonds Series 1997 for the Glade Creek Water Project. Approved on second reading and passed to third reading and a public hearing on August 25, 1997. Moved by Fred Fogleman.

Seconded by Mary McCallister.

Motion carried unanimously.

Council discussed the bid that was received for the sidewalk construction on McKees Creek. A motion was made to reject the bid of \$4,250.00 from Queener Construction because Council felt it was too high. Moved by Mary McCallister.

Seconded by C. T. Lay.

Motion carried unanimously.

Mayor LeRose read a letter of resignation submitted by Councilwoman Mary McCallister. Mary has been transferred to Princeton, therefore, she is resigning from the Council and Planning and Zoning Commission. Her resignation is effective August 12, 1997.

Councilwoman Mazzei said she had received complaints regarding Lincoln Street. She received a request to widen Lincoln Street at the hillcrest to make it safer. Mr. Hancock stated that he had received a complaint regarding the dangerous situation created by vehicles parking at Hardman's

Supply. Vehicles pulling out from Brock Street cannot see oncoming traffic. The complainant asked if Main Street could be reopened to two-way traffic instead of a one-way street as it is currently. Council took no action at this time.

Mayor LeRose reported that the Nicholas County Commission has requested that Council consider contributing financially to the paving of the parking lot at the Courthouse. The City will let them use our backhoe and grader. Council took no action at this time.

A motion to adjourn the meeting was made at 8:14 p.m. Moved by Mary McCallister.

Seconded by C. T. Lay.

Motion carried unanimously.

CITY OF SUMMERSVILLE  
400 NORTH BROAD STREET  
P.O. BOX 525  
SUMMERSVILLE, WEST VIRGINIA 26651

JOHN STEVEN LEROSE - MAYOR

TELEPHONE (304) 872-1211  
TELECOPY (304) 872-2236

Regular Meeting of Summersville City  
Council held on August 25, 1997

PRESENT: John Steven LeRose, Mayor  
Ron E. Hancock, Recorder  
Terry Lewis, Councilman Ward I  
Joe Pugh, Councilman Ward II  
Fred Fogleman, Councilman Ward III  
C. T. Lay, Councilman Ward III  
Donna Mazzei, Councilwoman Ward IV

ABSENT: Mike Hughes, Councilman Ward IV

VISITORS: Garry Evans, Chief  
Bob Hilleary, Waste Water Superintendent  
Marsha Cottle, New Realty Concepts

Recorder Ron Hancock called the Public Hearing to order at 7:35 p.m. He noted that proper advertising for the Public Hearing had been made in the local newspaper for two weeks regarding the Bond Ordinance for the Water and Sewer Revenue Bonds Series A - Glade Creek Extension Project. Mr. Hancock asked if there was anyone from the public to speak in favor of or in opposition to the Ordinance. No one appeared at the Public Hearing to make comments concerning the Bond Ordinance. A motion was made to close the Public Hearing at 7:40 p.m.. Moved by Fred Fogleman.

Seconded by Donna Mazzei.

Motion carried unanimously.

Mayor LeRose called the Council Meeting to order at 7:41 p.m.

A motion was made to approve, as presented, the Minutes of the Regular Meeting of City Council held on August 11, 1997. Moved by C. T. Lay.

Seconded by Terry Lewis.

Motion carried unanimously.

Council held the third reading of the Bond Ordinance for the Water and Sewer Revenue Bonds Series 1997 for the City of Summersville Glade Creek Water Project. Approved and adopted on third reading. Moved by Donna Mazzei.

Seconded by Fred Fogleman.

The vote was as follows:

Terry Lewis	-	Yes
Joe Pugh	-	Yes
Fred Fogleman	-	Yes
C. T. Lay	-	Abstained
Donna Mazzei	-	Yes
Ron Hancock	-	Yes

Motion carried with 5 voting in favor and 1 abstaining.

Council authorized payment to Stafford Consultants in the amount of \$26.33, Invoice #8 for services rendered in connection with the Nicholas Regional Water Supply Plan - Glade Creek Water - Right of Way Maps Phase - Project #95-6312.09. Moved by Donna Mazzei.

Seconded by Fred Fogleman.

Motion carried unanimously.

Council authorized payment to Stafford Consultants in the amount of 245.00, Invoice #2 for services rendered in connection with the Nicholas Regional Water Supply Plan - Glade Creek Water - Soils Investigation Phase - Project #95-6312.04. Moved by C. T. Lay.

Seconded by Joe Pugh.

Motion carried unanimously.

Council appointed Steve Acree to serve as the voting delegate at the WV Rural Water Association Annual Meeting to be held on September 8, 1997. Moved by Donna Mazzei.

Seconded by Fred Fogleman.

Motion carried unanimously.

Recorder Ron Hancock stated that Blair and Company had prepared the proposed operating budget for the water and sewer department for the City. This needs to be approved and sent to the Infrastructure Council. Motion was made to approve the proposed operating budget. Moved by Fred Fogleman.

Seconded by C. T. Lay.

Motion carried unanimously.

Recorder Hancock updated Council on Planning and Zoning matters. After several Meetings, P & Z finally worked out details to recommend approval of the subdivision located in Tara Estates. One requirement the subdivision did not meet was the size of some of the lots. Out of 12 lots, 4 did not meet minimum size requirement of 10,000 square feet. Several different options were discussed. One option was for New Realty to acquire additional property from the Department of Highways (DOH), however, this was not successful. New Realty will increase the size of 4 lots, 1 lot is adjoined by a vacant lot and a side boundary move will be made by deed. The other 3 lots are going to be deeded from the front of the property which is going to extend out in the proposed right-of-way and will make the lots larger. After considerable review and discussion, P & Z recommendation to Council is to make final approval of the subdivision. Ms. Cottle will submit documentation by 9/15/97 that all 4 lots meet the minimum requirements. A motion was made to accept the report of Planning and Zoning Commission if New Realty satisfactorily submits the required documents. Moved by Donna Mazzei.

Seconded by Joe Pugh.

Motion carried unanimously.

Recorder Hancock presented a second recommendation from P & Z. He said that Mr. Sagraves lives on one of the lots in question and has submitted a letter requesting a set-back waiver in order to build a garage. He does not meet the 25 foot set back that is required for the front. He also submitted a petition from the surrounding land owners that they had no objections. Planning and Zoning recommends to Council that they approve this set-back waiver pending approval of the subdivision. Motion was made to approve as presented. Moved by Fred Fogleman.

Seconded by Terry Lewis.

Motion carried unanimously.

Council held the first reading, by title only, to adopt an ordinance - Abandoned and Junk Vehicles Ordinance. This Ordinance would require junk vehicles and other items within the City to be removed. Passed on first reading with second reading to be held on September 8, 1997. Moved by Joe Pugh.

Seconded by Fred Fogleman.

Motion carried unanimously.

Mayor LeRose read a letter to the Summersville City crew from the WV Inter-Athletic Conference Softball Championship commending the City's efforts during the championship games.

Mayor LeRose stated that he and Ron had attended a meeting of the Infrastructure Council in Charleston regarding a regional water plant. Motion was made to send a letter to the Infrastructure Council requesting a \$5,000.00 grant and the City to provide matching funds of \$5,000.00 to do a study on the regional water plant. Moved by Fred Fogleman.

Seconded by Donna Mazzei.

Motion carried unanimously.

Mayor LeRose presented Council a request from the Nicholas County Commission for assistance in the funding to pave the parking lot located behind the Courthouse. The matter died due to the lack of a motion.

Mayor LeRose submitted a letter of recommendation to appoint John Jarrell, Jr. to the Hospital Board to replace L.G. McClung. His term will end on December 31, 2000. A motion was made to appoint Mr. Jarrell to the Board. Moved by Donna Mazzei.

Seconded by Terry Lewis.

Motion carried unanimously.

A motion was made to appoint C. T. Lay to the Planning and Zoning Commission. He will fill the unexpired term of Mary McCallister who resigned. His term will expire June 30, 2000. Moved by Joe Pugh.

Seconded by Donna Mazzei.

Motion carried unanimously.

Council held the first reading of an amendment to the Planning and Zoning Commission Ordinance. The amendment would expand the number of members from 5 to 7 members. Passed on first reading and second reading will be held on September 8, 1997. Moved by Joe Pugh.

Seconded by Donna Mazzei.

Motion carried unanimously.

Council went into Executive Session at 8:25 p.m. to discuss a personnel matter. The motion to go into Executive Session was made by Fred Fogleman.

Seconded by Donna Mazzei.

Motion carried unanimously.

Mayor LeRose called the Council Meeting back to order at 8:35 p.m. The Mayor reported that no action was taken during the Executive Session.

A motion to adjourn the meeting was made at 8:40 p.m. Moved by Fred Fogleman.

Seconded by Donna Mazzei.

Motion carried unanimously.

CITY OF SUMMERSVILLE  
400 NORTH BROAD STREET  
P.O. BOX 525  
SUMMERSVILLE, WEST VIRGINIA 26651

JOHN STEVEN LEROSE - MAYOR

TELEPHONE (304) 872-1211  
TELECOPY (304) 872-2236

Date: January 2, 1998

I certify this to be an original of the Supplemental  
Resolution as adopted by City Council on January 2, 1998.

  
Pam Hancock  
Recorder

THE CITY OF SUMMERSVILLE

SUPPLEMENTAL RESOLUTION

Supplemental Resolution providing for the dates, maturities, interest rates, principal payment schedules, sale prices and other terms of the Water and Sewer System Revenue Bonds, Series 1998 A, designating a registrar, paying agent and depository bank, approving the sale of the Water and Sewer System Revenue Bonds, Series 1998 A pursuant to a Loan Agreement and making other provisions as to such Bonds.

WHEREAS, the City Council of The City of Summersville (the "Issuer"), on August 11, 1997, enacted an Ordinance, all as more fully set out therein; (said Ordinance is hereinafter referred to as the "Ordinance"); and

WHEREAS, the Ordinance provides for the issuance of Water and Sewer System Revenue Bonds, Series 1997 A (which will hereinafter be referred to as the "Series 1998 A Bonds"), of the Issuer in aggregate principal amounts not to exceed \$700,000, all in accordance with Chapter 8, Article 20 of the Code of West Virginia, 1931, as amended (the "Act"), and further provides that the dates, interest rates, maturities, sale prices and other terms of and matters relating to, the Series 1998 A Bonds should be established by supplemental resolution; and

WHEREAS, the Series 1998 A Bonds are proposed to be sold to the West Virginia Water Development Authority pursuant to a Loan Agreement (the "Loan Agreement"); and

WHEREAS, capitalized terms used herein and not otherwise defined shall have the meanings given such terms in the Ordinance; and

WHEREAS, the Governing Body of the Issuer deems it essential and desirable that this resolution (the "Supplemental Resolution"), be adopted and that the prices, the maturity dates, the redemption provisions, the interest rates, and the interest and principal payment dates of the Series 1998 A Bonds be fixed hereby in the manner stated herein, that the Loan Agreement be ratified and approved and that other matters relating to the Bonds be herein provided for.

NOW THEREFORE, be it resolved by the City Council of The City of Summersville as follows:

Section 1. Pursuant to the Ordinance and the Act, this Supplemental Resolution is adopted and there are hereby authorized and ordered to be issued the Water and Sewer System Revenue Bonds (West Virginia Infrastructure and Job Development Council), Series 1998 A, in the aggregate principal amount of \$639,000 (the "Series 1998 A Bonds"), all in the form set forth in the Ordinance. The Issuer specifically approves the change in designation of the bonds from

Series 1997 A Bonds, as set forth in the Ordinance, to Series 1998 A Bonds, and all references in the Ordinance to Series 1997 A Bonds shall be deemed to mean the Series 1998 A Bonds.

(A) The Series 1998 A Bonds of the Issuer shall be originally issued in the form of a single bond payable to the Authority, numbered AR-1, shall be in the principal amount of \$639,000. The Series 1998 A Bonds shall be dated as of January 6, 1998, or as of the date of closing and shall mature on December 1, 2037. The Series 1998 A Bonds shall not bear interest and the principal thereof shall be payable beginning March 1, 1999, and on each June 1, September 1, December 1 and March 1 thereafter of each year, in the amounts and on the dates as set forth on Schedule Y attached hereto.

(B) The sale of the Series 1998 A Bonds to the Authority, which is hereby designated as the Original Purchaser of the Series 1998 A Bonds, and the Loan Agreement dated January 6, 1998, in the form attached to this Resolution as Exhibit A is hereby ratified and approved. The Mayor is authorized and directed to execute and deliver the Loan Agreement with such changes and insertions as he may approve. The Mayor's signature on such Agreement shall be conclusive evidence of such approval.

Section 2. Except as herein provided, all other provisions relating to the Series 1998 A Bonds shall be as provided in the Ordinance, and the Series 1998 A Bonds shall be in substantially the form provided in the Ordinance with such changes, insertions and omissions as may be approved by the Mayor of the Issuer. The execution of the Series 1998 A Bonds by the Mayor shall be conclusive evidence of such approval.

Section 3. The Issuer hereby determines that the bank currently serving as the Depository Bank for the Water and Sewer System Revenue Fund, One Valley Bank, Summersville, West Virginia, shall continue in that capacity.

Section 4. The Issuer hereby appoints and designates One Valley Bank, National Association, Charleston, West Virginia, as Registrar for the Bonds.

Section 5. The Issuer hereby appoints and designates the West Virginia Municipal Bond Commission, as Paying Agent for the Bonds.

Section 6. The Mayor and the Recorder of the Issuer are hereby authorized and directed to execute and deliver such other documents and certificates, including the Registrar's Agreement, required or desirable in connection with the Series 1998 A Bonds in order for the Series 1998 A Bonds to be delivered to the Original Purchaser pursuant to the Loan Agreement.

Section 7. The Issuer hereby authorizes and directs the repayment, from the first disbursement made under the Loan Agreement the following items:

Payee	Purpose	Amount
Stafford Consultants	Engineering	\$12,373.82

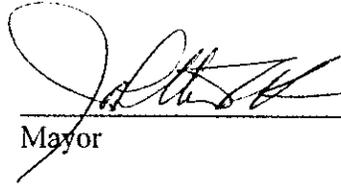
Gregory Tucker	Legal Services	\$14,043.72
Vaughan & Withrow	Bond Counsel	\$15,000.00
W Va. Division of Highways	Highway Permit	\$ 8,862.30

With respect to each item listed above, the Issuer hereby finds and represents:

- (a) That none of the items for which payment is proposed to be made has been the basis for any disbursement heretofore made;
- (b) That each item for which payment is proposed to be made is or was necessary in connection with the Project and constitutes a Cost of the services for the Project;
- (c) That each of such cost has been otherwise properly incurred; and
- (d) That the payment for each of the items proposed is now due and owing.

Section 8. This Supplemental Resolution shall be effective immediately upon adoption.

Adopted this 2<sup>nd</sup> day of January, 1998.



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Mayor



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Recorder

CITY OF SUMMERSVILLE  
400 NORTH BROAD STREET  
P.O. BOX 525  
SUMMERSVILLE, WEST VIRGINIA 26651

JOHN STEVEN LEROSE - MAYOR

TELEPHONE (304) 872-1211  
TELECOPY (304) 872-2236

Special Meeting of Summersville City  
Council held on January 2, 1998

PRESENT: John Steven LeRose, Mayor  
Ron E. Hancock, Recorder  
Irene Harrah, Councilwoman Ward I  
Terry Lewis, Councilman Ward I  
Joe Pugh, Councilman Ward II  
Fred Fogleman, Councilman Ward III  
C. T. Lay, Councilman Ward III  
Mike Hughes, Councilman Ward IV  
Donna Mazzei, Councilwoman Ward IV

VISITORS: Curt Persinger, Captain  
Jim Withrow, Vaughan and Withrow  
W. D. Smith, Region 4 PDC  
Greg Tucker, City Attorney

Mayor LeRose called the Special Council Meeting to order at  
12:05 p.m.

A motion was made to waive notice of the Special Council  
Meeting. Moved by C. T. Lay.

Seconded by Mike Hughes.

Motion carried unanimously.

Council discussed the Supplemental Resolution providing for  
the dates, maturities, interest rates, principal payment  
schedules, sale prices and other terms of the Water and Sewer  
System Revenue Bonds, Series 1998 A, designating a registrar,  
paying agent and depository bank, approving the sale of the  
Water and Sewer System Revenue Bonds, Series 1998 A pursuant  
to a Loan Agreement and making other provisions as to such  
Bonds (Glade Creek Water project). A motion was made to  
authorize the Mayor and Recorder to sign and execute the  
Supplemental Resolution. Moved by Joe Pugh.

Seconded by Donna Mazzei.

Motion carried unanimously.



Council discussed a Resolution approving invoices relating to the construction and other services for the proposed Glade Creek Water Extension Project funded in part by Series 1998 A Infrastructure Fund Bonds and an Infrastructure Fund Grant. A motion was made to approve the Resolution and authorize payment of the listed invoices. Moved by Mike Hughes.

Seconded by Fred Fogleman.

Motion carried unanimously.

Council authorized the Mayor and Recorder to open two (2) accounts at One Valley Bank (a Loan Account and Grant Account) and authorized the Mayor and Recorder to sign the checks to pay the contractors for services relating to the Glade Creek Water Project. Moved by Joe Pugh.

Seconded by Fred Fogleman.

Motion carried unanimously.

A motion was made to authorize the Mayor and Recorder to sign and execute all documents to finalize the loan closing for the Glade Creek Water Project. Moved by Donna Mazzei.

Seconded by Irene Harrah.

Motion carried unanimously.

A motion to adjourn the meeting was made at 1:00 p.m. Moved by Fred Fogleman.

Seconded by Mike Hughes.

Motion carried unanimously.



IC/WDA-1  
(July 1996)

LOAN AGREEMENT

THIS LOAN AGREEMENT, Made and entered into in several counterparts, by and between the WEST VIRGINIA WATER DEVELOPMENT AUTHORITY, a governmental instrumentality and body corporate of the State of West Virginia (the "Authority"), acting on behalf of the WEST VIRGINIA INFRASTRUCTURE AND JOBS DEVELOPMENT COUNCIL (the "Council") and the governmental agency designated below (the "Governmental Agency");

CITY OF SUMMERSVILLE  
(Governmental Agency)

W I T N E S S E T H:

WHEREAS, pursuant to the provisions of Chapter 31, Article 15A, of the Code of West Virginia, 1931, as amended (the "Act"), the Authority is empowered upon request of the Council to make loans to governmental agencies for the acquisition or construction of projects by such governmental agencies, subject to such provisions and limitations as are contained in the Act;

WHEREAS, the Governmental Agency constitutes a governmental agency as defined by the Act;

WHEREAS, the Governmental Agency is authorized and empowered by the statutes of the State to construct, operate and improve a project, as defined by the Act, and to finance the cost of constructing or acquiring the same by borrowing money to be evidenced by revenue bonds issued by the Governmental Agency;

WHEREAS, the Governmental Agency intends to construct, is constructing or has constructed such a project at the location and as more particularly described and set forth in the Application, as hereinafter defined (the "Project");

WHEREAS, the Governmental Agency has completed and filed with the Authority an Application for a Construction Loan with attachments and exhibits and an Amended Application for a Construction Loan also with attachments and exhibits (together, as further revised and supplemented, the "Application"), which Application is incorporated herein by this reference; and

WHEREAS, having reviewed the Application and made all findings required by the Act and having available sufficient funds therefor, the Council has authorized the Authority to lend the Governmental Agency the amount set forth on Schedule X attached hereto and incorporated herein by reference, through the purchase of revenue bonds of the Governmental Agency with money in the Infrastructure Fund subject to the Governmental Agency's satisfaction of certain legal and other requirements of the Council's loan program (the "Program") as hereinafter set forth.

NOW, THEREFORE, in consideration of the premises and the mutual agreements hereinafter contained, the Governmental Agency and the Authority hereby agree as follows:

## ARTICLE I

### Definitions

1.1 Except where the context clearly indicates otherwise, the terms "Authority," "cost," "governmental agency," "project," "waste water facility" and "water facility" have the definitions and meanings ascribed to them in the Act.

1.2 "Authority" means the West Virginia Water Development Authority, which is expected to be the original purchaser of the Bonds, acting in its administrative capacity pursuant to Section 10 of the Council Act and upon authorization from the Council.

1.3 "Consulting Engineers" means the professional engineer, licensed by the State, who shall not be a regular, full-time employee of the State or any of its agencies, commissions or political sub-divisions, and designated in the Application and any qualified successor thereto; provided, however, when a Loan is made for a Project financed, in part, by the Office of Abandoned Mine Lands, "Consulting Engineers" shall mean the West Virginia Division of Environmental Protection, or any successor thereto.

1.4 "Infrastructure Fund" means the West Virginia Infrastructure Fund established in accordance with Section 9 of the Act.

1.5 "Loan" means the loan to be made by the Authority to the Governmental Agency through the purchase of Local Bonds, as hereinafter defined, pursuant to this Loan Agreement.

1.6 "Local Act" means the official action of the Governmental Agency required by Section 4.1 hereof, authorizing the Local Bonds.

1.7 "Local Bonds" means the revenue bonds to be issued by the Governmental Agency pursuant to the provisions of the Local Statute, as hereinafter defined, to evidence the Loan and to be purchased by the Authority, all in accordance with the provisions of this Loan Agreement.

1.8 "Local Statute" means the specific provisions of the Code of West Virginia, 1931, as amended, pursuant to which the Local Bonds are issued.

1.9 "Operating Expenses" means the reasonable, proper and necessary costs of operation and maintenance of the System, as hereinafter defined, as should normally and regularly be included as such under generally accepted accounting principles.

1.10 "Project" means the project hereinabove referred to, to be constructed or being constructed by the Governmental Agency in whole or in part with the net proceeds of the Local Bonds.

1.11 "System" means the project owned by the Governmental Agency, of which the Project constitutes all or to which the Project constitutes an improvement, and any improvements thereto hereafter constructed or acquired from any sources whatsoever.

1.12 Additional terms and phrases are defined in this Loan Agreement as they are used.

## ARTICLE II

### The Project and the System

2.1 The Project shall generally consist of the construction and acquisition of the facilities described in the Application, to be, being or having been constructed in accordance with plans, specifications and designs prepared for the Governmental Agency by the Consulting Engineers, the Authority and Council having found, to the extent applicable, that the Project is consistent with the Act.

2.2 Subject to the terms, conditions and provisions of this Loan Agreement and of the Local Act, the Governmental Agency has acquired, or shall do all things necessary to acquire, the proposed site of the Project and shall do, is doing or has done all things necessary to construct the Project in accordance with the plans, specifications and designs prepared for the Governmental Agency by the Consulting Engineers.

2.3 All real estate and interests in real estate and all personal property constituting the Project and the Project site heretofore or hereafter acquired shall at all times be and remain the property of the Governmental Agency, subject to any mortgage lien or

other security interest as is provided for in the Local Statute unless a sale or transfer of all or a portion of said property or any interest therein is approved by the Authority and Council.

2.4 The Governmental Agency agrees that the Authority and its duly authorized agents shall have the right at all reasonable times to enter upon the Project site and Project facilities and to examine and inspect the same. The Governmental Agency further agrees that the Authority and its duly authorized agents and representatives shall, prior to, at and after completion of construction and commencement of operation of the Project, have such rights of access to the System site and System facilities as may be reasonably necessary to accomplish all of the powers and rights of the Authority with respect to the System pursuant to the pertinent provisions of the Act.

2.5 The Governmental Agency shall keep complete and accurate records of the cost of acquiring the Project site and the costs of constructing, acquiring and installing the Project. The Governmental Agency shall permit the Authority, acting by and through its Director or his duly authorized agents and representatives, to inspect all books, documents, papers and records relating to the Project and the System at any and all reasonable times for the purpose of audit and examination, and the Governmental Agency shall submit to the Authority such documents and information as it may reasonably require in connection with the construction, acquisition and installation of the Project, the operation and maintenance of the System and the administration of the Loan or of any State and federal grants or other sources of financing for the Project.

2.6 The Governmental Agency agrees that it will permit the Authority and its agents and representatives to have access to the records of the Governmental Agency pertaining to the operation and maintenance of the System at any reasonable time following completion of construction of the Project and commencement of operation thereof or if the Project is an improvement to an existing system at any reasonable time following commencement of construction.

2.7 The Governmental Agency shall require that each construction contractor furnish a performance bond and a payment bond, each in an amount at least equal to one hundred percent (100%) of the contract price of the portion of the Project covered by the particular contract, as security for the faithful performance of such contract.

2.8 The Governmental Agency shall require that each of its contractors and all subcontractors maintain, during the life of the construction contract, workers' compensation coverage, public liability insurance, property damage insurance and vehicle liability insurance in amounts and on terms satisfactory to the Authority. Until the Project facilities are completed and accepted by the Governmental Agency, the Governmental Agency or (at the option of the Governmental Agency) the contractor shall maintain builder's risk insurance (fire and extended coverage) on a one hundred percent (100%) basis (completed value form) on the insurable portion of the Project, such insurance to be made payable to the order of the Authority, the Governmental Agency, the prime contractor and

all subcontractors, as their interests may appear. If facilities of the System which are detrimentally affected by flooding are or will be located in designated special flood or mudslide-prone areas and if flood insurance is available at a reasonable cost, a flood insurance policy must be obtained by the Governmental Agency on or before the Date of Loan Closing, as hereinafter defined, and maintained so long as any of the Local Bonds is outstanding. Prior to commencing operation of the Project, the Governmental Agency must also obtain, and maintain so long as any of the Local Bonds is outstanding, business interruption insurance if available at a reasonable cost.

2.9 The Governmental Agency shall provide and maintain competent and adequate resident engineering services satisfactory to the Council and the Authority covering the supervision and inspection of the development and construction of the Project, and bearing the responsibility of assuring that construction conforms to the plans, specifications and designs prepared by the Consulting Engineers, which have been approved by all necessary governmental bodies. Such resident engineer shall certify to the Authority and the Governmental Agency at the completion of construction that construction is in accordance with the approved plans, specifications and designs, or amendments thereto, approved by all necessary governmental bodies.

2.10 The Governmental Agency agrees that it will at all times provide operation and maintenance of the System to comply with any and all State and federal standards. The Governmental Agency agrees that qualified operating personnel properly certified by the State will be retained to operate the System during the entire term of this Loan Agreement.

2.11 The Governmental Agency hereby covenants and agrees to comply with all applicable laws, rules and regulations issued by the Council, the Authority or other State, federal or local bodies in regard to the construction of the Project and operation, maintenance and use of the System.

2.12 The Governmental Agency, commencing on the date contracts are executed for the construction of the Project and for two years following the completion of the Project, shall each month complete a Monthly Financial Report, the form of which is attached hereto as Exhibit C and incorporated herein by reference, and forward a copy by the 15th of each month to the Authority and Council.

## ARTICLE III

### Conditions to Loan; Issuance of Local Bonds

3.1 The agreement of the Authority and Council to make the Loan is subject to the Governmental Agency's fulfillment, to the satisfaction of the Authority, of each and all of those certain conditions precedent on or before the delivery date for the Local Bonds, which shall be the date established pursuant to Section 3.4 hereof. Said conditions precedent are as follows:

(a) The Governmental Agency shall have performed and satisfied all of the terms and conditions to be performed and satisfied by it in this Loan Agreement;

(b) The Governmental Agency shall have authorized the issuance of and delivery to the Authority of the Local Bonds described in this Article III and in Article IV hereof;

(c) The Governmental Agency shall either have received bids or entered contracts for the construction of the Project which are in an amount and otherwise compatible with the plan of financing described in the Application; provided, that, if the Loan will refund an interim financing of construction, the Governmental Agency must either be constructing or have constructed its Project for a cost and as otherwise compatible with the plan of financing described in the Application; and, in either case, the Authority shall have received a certificate of the Consulting Engineers to such effect, the form of which certificate is attached hereto as Exhibit A;

(d) The Governmental Agency shall have obtained all permits required by the laws of the State and the federal government necessary for the construction of the Project, and the Authority shall have received a certificate of the Consulting Engineers to such effect;

(e) The Governmental Agency shall have obtained all requisite orders of and approvals from the Public Service Commission of West Virginia (the "PSC") necessary for the construction of the Project and operation of the System with all requisite appeal periods having expired without successful appeal, and the Authority shall have received an opinion of counsel to the Governmental Agency, which may be local counsel to the Governmental Agency, bond counsel or special PSC counsel but must be satisfactory to the Authority, to such effect;

(f) The Governmental Agency shall have obtained any and all approvals for the issuance of the Local Bonds required by State law, and the Authority shall have received an opinion of counsel to the Governmental Agency, which may be local

counsel to the Governmental Agency, bond counsel or special PSC counsel but must be satisfactory to the Authority, to such effect;

(g) The Governmental Agency shall have obtained any and all approvals of rates and charges required by State law and shall have taken any other action required to establish and impose such rates and charges (imposition of such rates and charges is not, however, required to be effective until completion of construction of the Project) with all requisite appeal periods having expired without successful appeal, and the Authority shall have received an opinion of counsel to the Governmental Agency, which may be local counsel to the Governmental Agency, bond counsel or special PSC counsel but must be satisfactory to the Authority, to such effect;

(h) Such rates and charges for the System shall be sufficient to comply with the provisions of Subsections 4.1(a) and 4.1(b)(ii) hereof, and the Authority shall have received a certificate of the accountant for the Governmental Agency, or such other person or firm experienced in the finances of governmental agencies and satisfactory to the Authority, to such effect; and

(i) The net proceeds of the Local Bonds, together with all moneys on deposit or to be simultaneously deposited (or, with respect to proceeds of grant anticipation notes or other indebtedness for which a binding purchase contract has been entered, to be deposited on a date certain) and irrevocably pledged thereto and the proceeds of grants irrevocably committed therefor, shall be sufficient to pay the costs of construction and acquisition of the Project as set forth in the Application, and the Authority shall have received a certificate of the Consulting Engineers, or such other person or firm experienced in the financing of water development projects and satisfactory to the Authority, to such effect, such certificate to be in form and substance satisfactory to the Authority, and evidence satisfactory to the Authority of such irrevocably committed grants.

3.2 Subject to the terms and provisions of this Loan Agreement, the rules and regulations promulgated by the Authority or any other appropriate State agency and any applicable rules, regulations and procedures promulgated from time to time by the federal government, it is hereby agreed that the Authority shall make the Loan to the Governmental Agency and the Governmental Agency shall accept the Loan from the Authority, and in furtherance thereof it is agreed that the Governmental Agency shall sell to the Authority and the Authority shall make the Loan by purchasing the Local Bonds in the principal amount and at the price set forth in Schedule X hereto. The Local Bonds shall have such further terms and provisions as described in Article IV hereof.

3.3 The Loan shall be secured and shall be repaid in the manner hereinafter provided in this Loan Agreement.

3.4 The Local Bonds shall be delivered to the Authority, at the offices of the Authority, on a date designated by the Governmental Agency by written notice to the

Authority, which written notice shall be given not less than ten (10) business days prior to the date designated; provided, however, that if the Authority is unable to accept delivery on the date designated, the Local Bonds shall be delivered to the Authority on a date as close as possible to the designated date and mutually agreeable to the Authority and the Governmental Agency. The date of delivery so designated or agreed upon is hereinafter referred to as the "Date of Loan Closing." Notwithstanding the foregoing, the Date of Loan Closing shall in no event occur more than ninety (90) days after the date of execution of this Loan Agreement by the Authority.

3.5 The Governmental Agency understands and acknowledges that it is one of several governmental agencies which have applied to the Council for loans to finance projects and that the obligation of the Authority to make any such loan is subject to the Council's authorization and the Governmental Agency's fulfilling all of the terms and conditions of this Loan Agreement on or prior to the Date of Loan Closing. The Governmental Agency specifically recognizes that the Authority will not purchase the Local Bonds unless and until it has available in the Infrastructure Fund funds sufficient to purchase all the Local Bonds and that, prior to such execution, the Authority may commit to and purchase the revenue bonds of other governmental agencies for which it has sufficient funds available.

#### ARTICLE IV

Local Bonds; Security for Loan;  
Repayment of Loan; Interest on Loan;  
Fees and Charges

4.1 The Governmental Agency shall, as one of the conditions of the Authority to make the Loan, authorize the issuance of and issue the Local Bonds pursuant to an official action of the Governmental Agency in accordance with the Local Statute, which shall, as enacted, contain provisions and covenants in substantially the form as follows, unless the specific provision or covenant is modified or waived by the Council:

(a) That the gross revenues of the System shall always be used for purposes of the System. The revenues generated from the operation of the System will be used monthly, in the order of priority listed below:

- (i) to pay Operating Expenses of the System;
- (ii) to the extent not otherwise limited by any outstanding loan resolution, indenture or other act or document and beginning on the date set forth in Schedule

X to provide debt service on the Local Bonds by depositing in a sinking fund one-third (1/3) of the interest payment next coming due on the Local Bonds and one-third (1/3) of the principal payment next coming due on the Local Bonds and, beginning three (3) months prior to the first date of payment of principal of the Local Bonds, if the reserve account for the Local Bonds, if any (the "Reserve Account"), was not funded from proceeds of the Local Bonds or otherwise concurrently with the issuance thereof in an amount equal to an amount at least equal to the maximum amount of principal and interest which will come due on the Local Bonds in the then current or any succeeding year (the "Reserve Requirement"), by depositing in the Reserve Account an amount not less than one-twelfth (1/12) of one-tenth (1/10) of the Reserve Requirement or, if the Reserve Account has been so funded (whether by Local Bond proceeds, monthly deposits or otherwise), any amount necessary to maintain the Reserve Account at the Reserve Requirement;

(iii) to create a renewal and replacement, or similar, fund in an amount equal to two and one-half percent (2-1/2%) of the gross revenues from the System, exclusive of any payments into the Reserve Account, for the purpose of improving or making emergency repairs or replacements to the System or eliminating any deficiencies in the Reserve Account; and

(iv) for other legal purposes of the System, including payment of debt service on other obligations junior, subordinate and inferior to the Local Bonds.

Provided, that if the Governmental Agency has existing outstanding indebtedness which has greater coverage or renewal and replacement fund requirements, then the greater requirements will prevail until said existing indebtedness is paid in full.

(b) Covenants substantially as follows:

(i) That the Local Bonds shall be secured by the gross or net revenues from the System, as more fully set forth in Schedules X and Y attached hereto;

(ii) That the schedule of rates or charges for the services of the System shall be sufficient to provide funds which, along with other revenues of the System, will pay all Operating Expenses and leave a balance each year equal to at least one hundred fifteen percent (115%) of the maximum amount required in any year for debt service on the Local Bonds and all other obligations secured by a lien on or payable from the revenues of the System prior to or on a parity with the Local Bonds or, if the reserve account, if any, established for the payment of debt service on the Local Bonds (the "Reserve Account") is funded (whether by Local Bond proceeds, monthly deposits or otherwise) at an amount at least equal to the maximum amount of principal and interest which will come due on the Local Bonds in the then current or any succeeding year (the "Reserve Requirement") and any reserve account for any such prior or parity obligations is funded at least at the requirement therefor, equal to at least one hundred ten percent (110%) of the maximum

amount required in any year for debt service on the Local Bonds and any such prior or parity obligations;

(iii) That the Governmental Agency will complete the Project and operate and maintain the System in good condition;

(iv) That, except as otherwise required by State law or with the written consent of the Council and the Authority, the System may not be sold, mortgaged, leased or otherwise disposed of except as a whole, or substantially as a whole, and only if the net proceeds to be realized shall be sufficient to pay fully all the Local Bonds outstanding, with further restrictions on the disposition of portions of the System as are normally contained in such covenants;

(v) That the Governmental Agency shall not issue any other obligations payable from the revenues of the System which rank prior to, or equally, as to lien and security with the Local Bonds, except parity bonds which shall only be issued if net revenues of the System prior to issuance of such parity bonds, plus reasonably projected revenues from rate increases and the improvements to be financed by such parity bonds, based upon the rates, Operating Expenses and customer usage on the date of closing, shall not be less than one hundred fifteen percent (115%) of the maximum debt service in any succeeding year on all Local Bonds and parity bonds theretofore and then being issued and on any obligations secured by a lien on or payable from the revenues of the System prior to the Local Bonds; provided, however, that additional parity bonds may be issued to complete the Project, as described in the Application as of the date hereof, without regard to the foregoing;

(vi) That the Governmental Agency will carry such insurance as is customarily carried with respect to works and properties similar to the System, including those specified by Section 2.8 hereof;

(vii) That the Governmental Agency will not render any free services of the System;

(viii) That any Local Bond owner may, by proper legal action, compel the performance of the duties of the Governmental Agency under the Local Act, including the making and collection of sufficient rates or charges for services rendered by the System, and shall also have, in the event of a default in payment of principal of or interest on the Local Bonds, the right to obtain the appointment of a receiver to administer the System or construction of the Project, or both, as provided by law;

(ix) That, to the extent authorized by the laws of the State and the rules and regulations of the PSC, all delinquent rates and charges, if not paid when due, shall become a lien on the premises served by the System;

(x) That, to the extent legally allowable, the Governmental Agency will not grant any franchise to provide any services which would compete with the System;

(xi) That the Governmental Agency shall annually cause the records of the System to be audited by an independent certified public accountant or independent public accountant and shall submit the report of said audit to the Authority, which report shall include a statement that the Governmental Agency is in compliance with the terms and provisions of the Local Act and this Loan Agreement and that the Governmental Agency's revenues are adequate to meet its operation and maintenance expenses and debt service requirements;

(xii) That the Governmental Agency shall annually adopt a detailed budget of the estimated revenues and expenditures for operation and maintenance of the System during the succeeding fiscal year and shall submit a copy of such budget to the Authority within 30 days of adoption thereof;

(xiii) That for wastewater systems, to the extent authorized by the laws of the State and the rules and regulations of the PSC, prospective users of the System shall be required to connect thereto;

(xiv) That the proceeds of the Local Bonds must (a) be deposited in a construction fund, which, except as otherwise agreed to in writing by the Authority, shall be held separate and apart from all other funds of the Governmental Agency and on which the owners of the Local Bonds shall have a lien until such proceeds are applied to the construction of the Project (including the repayment of any incidental interim financing for non-construction costs) and/or (b) be used to pay (or redeem) bond anticipation notes or other interim funding of such Governmental Agency, the proceeds of which were used to finance the construction of the Project; provided that, with the prior written consent of the Authority, the proceeds of the Local Bonds may be used to fund all or a portion of the Reserve Account, on which the owner of the Local Bonds shall have a lien as provided herein;

(xv) That, as long as the Authority is the owner of any of the Local Bonds, the Governmental Agency may not redeem any Local Bonds by it without the written consent of the Authority and the Council and otherwise in compliance with this Loan Agreement;

(xvi) That, unless it qualifies for an exception to the provisions of Section 148 of the Code, which exception shall be set forth in an opinion of bond counsel, the Governmental Agency will furnish to the Authority, annually, at such time as it is required to perform its rebate calculations under the Code, a certificate with respect to its rebate calculations and, at any time, any additional information requested by the Authority;

(xvii) That the Governmental Agency shall take any and all action, or shall refrain from taking any action, as shall be deemed necessary by the Authority to maintain the exclusion from gross income for Federal income tax purposes of interest on the State's general obligation bonds or any bonds secured by the Local Bonds;

(xviii) That the Governmental Agency shall have obtained the certificate of the Consulting Engineer in the form attached to the Loan Application, to the effect that the Project has been or will be constructed in accordance with the approved plans, specifications and design as submitted to the Authority, the Project is adequate for the purposes for which it was designed and the funding plan as submitted to the Authority is sufficient to pay the costs of acquisition and construction of the Project;

(xix) To the extent applicable, that the Governmental Agency shall, to the full extent permitted by applicable law and the rules and regulations of the West Virginia Public Service Commission, terminate the services of any water facility owned by it to any customer of the System who is delinquent in payment of charges for services provided by the System and will not restore the services of the water facility until all delinquent charges for the services of the System have been fully paid or, if the water facility is not owned by the Governmental Agency, then the Governmental Agency shall enter into a termination agreement with the water provider;

(xx) That the Governmental Agency shall furnish to the Authority such information with respect to earnings on all funds constituting "gross proceeds" of the Local Bonds (as that term is defined in the Code) from time to time as the Authority may request; and

(xxi) That the Governmental Agency shall submit all proposed change orders to the Council for written approval. The Governmental Agency shall obtain the written approval of the Council before expending any proceeds of the Local Bonds held in "contingency" as set forth in the final Schedule B. The Governmental Agency shall obtain the written approval of the Council before expending any proceeds of the Local Bonds available due to bid/construction/project underruns.

The Governmental Agency hereby represents and warrants that the Local Act has been or shall be duly adopted in compliance with all necessary corporate and other action and in accordance with applicable provisions of law. All legal matters incident to the authorization, issuance, sale and delivery of the Local Bonds shall be approved without qualification by recognized bond counsel acceptable to the Authority in substantially the form of legal opinion attached hereto as Exhibit B.

4.2 The Loan shall be secured by the pledge and assignment by the Governmental Agency, as effected by the Local Act, of the fees, charges and other revenues of the Governmental Agency from the System as further set forth by and subject only to such

reservations and exceptions as are described in Schedules X and Y hereto or are otherwise expressly permitted in writing by the Authority and the Council.

4.3 The principal of the Loan shall be repaid by the Governmental Agency on the days and in the years provided in Schedule X hereto. Interest payments on the Loan shall be made by the Governmental Agency on a quarterly basis as provided in said Schedule X.

4.4 The Loan shall bear interest from the date of first payment at the rate or rates per annum set forth on Schedule X hereto. In no event shall the interest rate on or the net interest cost of the Local Bonds exceed any statutory limitation with regard thereto.

4.5 The Local Bonds shall be delivered to the Authority in fully registered form, transferable and exchangeable as provided in the Local Act at the expense of the Governmental Agency. Anything to the contrary herein notwithstanding, the Local Bonds may be issued in one or more series, as reflected by Schedule X hereto.

4.6 The Governmental Agency agrees to expend the net proceeds of the Local Bonds for the Project within 3 years of the issuance of the State's general obligation bonds unless otherwise agreed to by the Council.

## ARTICLE V

### Certain Covenants of the Governmental Agency; Imposition and Collection of User Charges; Payments To Be Made by Governmental Agency to the Authority

5.1 The Governmental Agency hereby irrevocably covenants and agrees to comply with all of the terms, conditions and requirements of this Loan Agreement and the Local Act. The Governmental Agency hereby further irrevocably covenants and agrees that, as one of the conditions of the Authority to make the Loan, it has fixed and collected, or will fix and collect, the rates, fees and other charges for the use of the System, as set forth in the Local Act and in compliance with the provisions of Subsections 4.1(a) and 4.1(b)(ii) hereof.

5.2 In the event, for any reason, the schedule of rates, fees and charges initially established for the System in connection with the Local Bonds shall prove to be insufficient to produce the minimum sums set forth in the Local Act, the Governmental Agency hereby covenants and agrees that it will, to the extent or in the manner authorized by law, immediately adjust and increase such schedule of rates, fees and charges so as to provide funds sufficient to produce the minimum sums set forth in the Local Act and as required by this Loan Agreement.

5.3 In the event the Governmental Agency defaults in the payment of any fees due to the Authority pursuant to Section 4.6 hereof, the amount of such default shall bear interest at the interest rate of the installment of the Loan next due, from the date of the default until the date of the payment thereof.

5.4 The Governmental Agency hereby irrevocably covenants and agrees with the Authority that, in the event of any default hereunder by the Governmental Agency, the Authority may exercise any or all of the rights and powers granted under the Act and State law, including without limitation the right to an appointment of a receiver.

## ARTICLE VI

### Other Agreements of the Governmental Agency

6.1 The Governmental Agency hereby warrants and represents that all information provided to the Authority in this Loan Agreement, in the Application or in any other application or documentation with respect to financing the Project was at the time, and now is, true, correct and complete, and such information does not omit any material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. Prior to the Authority's making the Loan and receiving the Local Bonds, the Authority shall have the right to cancel all or any of its obligations under this Loan Agreement if (a) any representation made to the Authority by the Governmental Agency in connection with the Loan shall be incorrect or incomplete in any material respect or (b) the Governmental Agency has violated any commitment made by it in its Application or in any supporting documentation or has violated any of the terms of this Loan Agreement.

6.2 The Governmental Agency hereby covenants that it will rebate any amounts required by Section 148 of the Internal Revenue Code of 1986, as amended, and will take all steps necessary to make any such rebates. In the event the Governmental Agency fails to make any such rebates as required, then the Governmental Agency shall pay any and all penalties, obtain a waiver from the Internal Revenue Service and take any other actions necessary or desirable to preserve the exclusion from gross income for Federal income tax purposes of interest on the Local Bonds.

6.3 Notwithstanding Section 6.2, the Authority may at any time, in its sole discretion, cause the rebate calculations prepared by or on behalf of the Governmental Agency to be monitored or cause the rebate calculations for the Governmental Agency to be prepared, in either case at the expense of the Governmental Agency.

6.4 The Governmental Agency hereby agrees to give the Authority prior written notice of the issuance by it of any other obligations to be used for the Project, payable

from the revenues of the System or from any grants for the Project or otherwise related to the Project or the System.

6.5 The Governmental Agency hereby agrees to file with the Authority upon completion of acquisition and construction of the Project a schedule in substantially the form of Amended Schedule A to the Application, setting forth the actual costs of the Project and sources of funds therefor.

## ARTICLE VII

### Miscellaneous

7.1 Additional definitions, additional terms and provisions of the Loan and additional covenants and agreements of the Governmental Agency may be set forth in Schedule Z attached hereto and incorporated herein by reference, with the same effect as if contained in the text of this Loan Agreement.

7.2 The Authority shall take all actions required by the Council in making and enforcing this Loan Agreement.

7.3 If any provision of this Loan Agreement shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such provision shall not affect any of the remaining provisions of this Loan Agreement, and this Loan Agreement shall be construed and enforced as if such invalid or unenforceable provision had not been contained herein.

7.4 This Loan Agreement may be executed in one or more counterparts, any of which shall be regarded for all purposes as an original and all of which constitute but one and the same instrument. Each party agrees that it will execute any and all documents or other instruments and take such other actions as may be necessary to give effect to the terms of this Loan Agreement.

7.5 No waiver by either party of any term or condition of this Loan Agreement shall be deemed or construed as a waiver of any other terms or conditions, nor shall a waiver of any breach be deemed to constitute a waiver of any subsequent breach, whether of the same or of a different section, subsection, paragraph, clause, phrase or other provision of this Loan Agreement.

7.6 This Loan Agreement merges and supersedes all prior negotiations, representations and agreements between the parties hereto relating to the Loan and constitutes the entire agreement between the parties hereto in respect thereof.

7.7 By execution and delivery of this Loan Agreement, notwithstanding the date hereof, the Governmental Agency specifically recognizes that it is hereby agreeing to sell its Local Bonds to the Authority and that such obligation may be specifically enforced or subject to a similar equitable remedy by the Authority.

7.8 This Loan Agreement shall terminate upon the earlier of:

- (i) the end of ninety (90) days after the date of execution hereof by the Authority if the Governmental Agency has failed to deliver the Local Bonds to the Authority;
- (ii) termination by the Authority pursuant to Section 6.1 hereof; or
- (iii) payment in full of the principal of and interest on the Loan and of any fees and charges owed by the Governmental Agency to the Authority, acting on behalf of the Council.

7.9 The Authority acknowledges that certain terms and requirements in this Loan Agreement may not be applicable when the Project is financed in part by the West Virginia Division of Environmental Protection, Office of Abandoned Mine Lands and under that circumstance those terms and requirements are specifically waived or modified as agreed to by the Authority and set forth in the Local Act.

IN WITNESS WHEREOF, the parties hereto have caused this Loan Agreement to be executed by their respective duly authorized officers as of the date executed below by the Authority.

CITY OF SUMMERSVILLE

(SEAL)

By: [Signature]

Its: Mayor

Date: 1/06/98

Attest:

[Signature]  
Its: Recorder

WEST VIRGINIA WATER DEVELOPMENT AUTHORITY

(SEAL)

By: [Signature]  
Director

Attest:

[Signature]  
Secretary-Treasurer

Date: 1/06/98

EXHIBIT A

FORM OF CERTIFICATE OF CONSULTING ENGINEER

\_\_\_\_\_  
(Issuer)

\_\_\_\_\_  
(Name of Bonds)

I, \_\_\_\_\_, Registered Professional Engineer, West Virginia License No. \_\_\_\_\_, of \_\_\_\_\_, Consulting Engineers, \_\_\_\_\_, \_\_\_\_\_, hereby certify that my firm is engineer for the acquisition and construction of \_\_\_\_\_ to the \_\_\_\_\_ system (herein called the "Project") of \_\_\_\_\_ (the "Issuer") to be constructed primarily in \_\_\_ County, West Virginia, which construction and acquisition are being permanently financed in part by the above-captioned bonds (the "Bonds") of the Issuer. Capitalized words not defined herein shall have the meaning set forth in the \_\_\_\_\_ passed by the \_\_\_\_\_ of the Issuer on \_\_\_\_\_, 19\_\_, effective \_\_\_\_\_, 19\_\_, and the Loan Agreement by and between the Issuer and the West Virginia Water Development Authority (the "Authority") dated \_\_\_\_\_, 19\_\_.

1. The Bonds are being issued for the purpose of \_\_\_\_\_  
\_\_\_\_\_ (the "Project").

2. The undersigned hereby certifies that (i) the Project will be constructed in accordance with the approved plans, specifications and designs prepared by my firm and as described in the application submitted to the Authority requesting the Authority to purchase the Bonds (the "Application") and approved by all necessary governmental bodies, (ii) the Project is adequate for the purpose for which it was designed and has an estimated useful life of at least \_\_\_\_\_ years, (iii) the Issuer has received bids for the construction of the Project which are in an amount and otherwise compatible with the plan of financing described in the Application and my firm has ascertained that all contractors have made required provisions for all insurance and payment and performance bonds and that such insurance policies or binders and such bonds have been verified by my firm for accuracy, (iv) the Issuer has obtained all permits required by the laws of the State and the federal government necessary for the construction of the Project, (v) the rates and charges for the System as adopted by the \_\_\_\_\_ of the Issuer are sufficient to comply with the provisions of Subsection 4.1(b)(ii) of the Loan Agreement, (vi) the net proceeds of the Bonds, together with all other moneys on deposit or to be simultaneously deposited and irrevocably pledged thereto and the proceeds of grants irrevocably committed therefor, are sufficient to pay the costs of construction and acquisition of the Project as set forth in the Application, and (vii) attached hereto as Exhibit A is the final amended "Schedule B - Total Cost of Project and Sources of Funds" for the Project.

WITNESS my signature on this \_\_ day of \_\_\_\_, 19\_\_.

\_\_\_\_\_  
By: \_\_\_\_\_

West Virginia License No. \_\_\_\_\_

[SEAL]

EXHIBIT B

[Opinion of Bond Counsel for Governmental Agency]

[To Be Dated as of Date of Loan Closing]

West Virginia Infrastructure and  
Jobs Development Council  
c/o West Virginia Water Development Authority  
1201 Dunbar Avenue  
Dunbar, West Virginia 25064

Ladies and Gentlemen:

We are bond counsel to \_\_\_\_\_ (the  
"Governmental Agency"), a \_\_\_\_\_  
\_\_\_\_\_.

We have examined a certified copy of proceedings and other papers relating to (i) the authorization of a loan agreement dated \_\_\_\_\_, 19\_\_, including all schedules and exhibits attached thereto (the "Loan Agreement"), between the Governmental Agency and the West Virginia Water Development Authority (the "Authority") and (ii) the issue of a series of revenue bonds of the Governmental Agency, dated \_\_\_\_\_, 19\_\_ (the "Local Bonds"), to be purchased by the Authority in accordance with the provisions of the Loan Agreement. The Local Bonds are in the principal amount of \$\_\_\_\_\_, issued in the form of one bond registered as to principal and interest to the Authority, with interest and principal payable in installments on September 1, December 1, March 1 and June 1 of each year, beginning December 1, 1997, at the rate as set forth in Exhibit A incorporated in and made a part of the Bonds.

The Local Bonds are issued for the purpose of \_\_\_\_\_ and paying certain issuance and other costs in connection therewith.

We have also examined the applicable provisions of \_\_\_\_\_ of the Code of West Virginia, 1931, as amended (the "Local Statute"), and the bond \_\_\_\_\_ duly enacted by the Governmental Agency on \_\_\_\_\_ (the "Local Act"), pursuant to and under which Local Statute and Local Act the Local Bonds are authorized and issued, and the Loan Agreement that has been undertaken. The Local Bonds are subject to redemption prior to maturity to the extent, at the time, under the conditions and subject to the limitations set forth in the Local Act and the Loan Agreement.

Based upon the foregoing and upon our examination of such other documents as we have deemed necessary, we are of the opinion as follows:

1. The Loan Agreement has been duly authorized by and executed on behalf of the Governmental Agency and is a valid and binding special obligation of the Governmental Agency enforceable in accordance with the terms thereof.

2. The Loan Agreement inures to the benefit of the Authority and cannot be amended so as to affect adversely the rights of the Authority or diminish the obligations of the Governmental Agency without the consent of the Authority.

3. The Governmental Agency is a duly organized and presently existing \_\_\_\_\_, with full power and authority to construct and acquire the Project and to operate and maintain the System referred to in the Loan Agreement and to issue and sell the Local Bonds, all under the Local Statute and other applicable provisions of law.

4. The Governmental Agency has legally and effectively enacted the Local Act and all other necessary \_\_\_\_\_ in connection with the issuance and sale of the Local Bonds. The Local Act contains provisions and covenants substantially in the form of those set forth in Section 4.1 of the Loan Agreement.

5. The Local Bonds are valid and legally enforceable special obligations of the Governmental Agency, payable from the [net] revenues of the System referred to in the Local Act and secured by a [first] lien on and pledge of the [net] revenues of said System, all in accordance with the terms of the Local Bonds and the Local Act, and have been duly issued and delivered to the Authority.

6. [If required, the Local Bonds are, by statute, exempt \_\_\_\_\_, and under existing statutes and court decisions of the United States of America, as presently written and applied, the interest on the Local Bonds is excludable from the gross income of the recipients thereof for Federal income tax purposes.]

No opinion is given herein as to the effect upon enforceability of the Local Bonds of bankruptcy, insolvency, reorganization, moratorium and other laws affecting creditors' rights or in the exercise of judicial discretion in appropriate cases.

We have examined executed and authenticated Local Bond numbered R-1, and in our opinion the form of said bond and its execution and authentication are regular and proper.

Very truly yours,

EXHIBIT C

Monthly Financial Report

\_\_\_\_\_  
[Name of Governmental Agency]

\_\_\_\_\_  
[Name of Bond Issue]

Fiscal Year - \_\_\_\_ - \_\_\_\_

Report Month: \_\_\_\_\_

	<u>CURRENT</u>	<u>YEAR TO</u>	<u>BUDGET YEAR</u>	
<u>ITEM</u>	<u>MONTH</u>	<u>DATE</u>	<u>TO DATE</u>	<u>DIFFERENCE</u>
1. Gross Revenues Collected				
2. Operation and Maintenance Expense				
3. Other Bond Debt Payments (including Reserve Fund deposits)				
4. Bond Payments (include Reserve Fund deposits)				
5. Renewal and Replacement Fund Deposit				
6. Funds available for capital construction				

Witnesseth my signature this \_\_ day of \_\_\_\_, 19\_\_.

[Name of Governmental Agency]

By: \_\_\_\_\_  
Authorized Officer

CHASFS3:58465

## SCHEDULE X

### DESCRIPTION OF BONDS

Principal Amount of Bonds	\$639,000
Purchase Price of Bonds	\$639,000

Principal on the Bonds is payable quarterly, commencing March 1, 1999 to and including December 1, 2037, at a rate of 0% per annum. Quarterly payments will be made thereafter on each September 1, December 1, March 1 and June 1, as set forth on Schedule Y attached hereto and incorporated herein by reference. - The Bonds shall be issued on a parity with the Governmental Agency's 1967 Water and Sewer Revenue Note, Series 1990 A Water and Sewer Revenue Bonds and Series 1991 A Water and Sewer Revenue Bonds, and senior and prior to the Governmental Agency's 1977 Water and Sewer Revenue Bonds, Series 1990 B Water and Sewer Revenue Bonds, and Series 1991 B Water and Sewer Revenue Bonds.

The Governmental Agency shall submit its payments monthly to the West Virginia Municipal Bond Commission which will make quarterly payments to the West Virginia Water Development Authority at such address as is given to the West Virginia Municipal Bond Commission in writing by the Authority.

The Bonds will be fully registered in the name of the West Virginia Water Development Authority as to principal and such Bonds shall grant the Authority a first parity lien on the net revenues of the Governmental Agency's system.

The Governmental Agency may prepay the Bonds in full at any time at the price of par but only with the Council's written consent. The Governmental Agency shall request approval from the Authority and Council in writing of any proposed debt which will be issued by the Governmental Agency on a parity with Bonds which request must be filed at least 60 days prior to the intended date of issuance.

SCHEDULE Y

Quarterly Debt Service Schedule

**City of Summersville**  
**\$639,000**  
**Infrastructure Fund Loan**

Term (Yrs.): 40

Loan Rate: 0.00%

First Payment: 03/01/99

Final Payment: 12/1/37

Date		Principal	Interest	Total
12/1/97		-	-	-
3/1/98		-	-	-
6/1/98		-	-	-
9/1/98		-	-	-
12/1/98		-	-	-
3/1/99	1	4,096.15	-	4,096.15
6/1/99	2	4,096.16	-	4,096.16
9/1/99	3	4,096.15	-	4,096.15
12/1/99	4	4,096.16	-	4,096.16
3/1/00	5	4,096.15	-	4,096.15
6/1/00	6	4,096.16	-	4,096.16
9/1/00	7	4,096.15	-	4,096.15
12/1/00	8	4,096.16	-	4,096.16
3/1/01	9	4,096.15	-	4,096.15
6/1/01	10	4,096.16	-	4,096.16
9/1/01	11	4,096.15	-	4,096.15
12/1/01	12	4,096.16	-	4,096.16
3/1/02	13	4,096.15	-	4,096.15
6/1/02	14	4,096.16	-	4,096.16
9/1/02	15	4,096.15	-	4,096.15
12/1/02	16	4,096.16	-	4,096.16
3/1/03	17	4,096.15	-	4,096.15
6/1/03	18	4,096.16	-	4,096.16
9/1/03	19	4,096.15	-	4,096.15
12/1/03	20	4,096.16	-	4,096.16
3/1/04	21	4,096.15	-	4,096.15
6/1/04	22	4,096.16	-	4,096.16
9/1/04	23	4,096.15	-	4,096.15
12/1/04	24	4,096.16	-	4,096.16
3/1/05	25	4,096.15	-	4,096.15
6/1/05	26	4,096.16	-	4,096.16
9/1/05	27	4,096.15	-	4,096.15
12/1/05	28	4,096.16	-	4,096.16
3/1/06	29	4,096.15	-	4,096.15
6/1/06	30	4,096.16	-	4,096.16
9/1/06	31	4,096.15	-	4,096.15
12/1/06	32	4,096.16	-	4,096.16
3/1/07	33	4,096.15	-	4,096.15
6/1/07	34	4,096.16	-	4,096.16
9/1/07	35	4,096.15	-	4,096.15
12/1/07	36	4,096.16	-	4,096.16

## Quarterly Debt Service Schedule

Date	#	Principal	Interest	Total
3/1/08	37	4,096.15	-	4,096.15
6/1/08	38	4,096.16	-	4,096.16
9/1/08	39	4,096.15	-	4,096.15
12/1/08	40	4,096.16	-	4,096.16
3/1/09	41	4,096.15	-	4,096.15
6/1/09	42	4,096.16	-	4,096.16
9/1/09	43	4,096.15	-	4,096.15
12/1/09	44	4,096.16	-	4,096.16
3/1/10	45	4,096.15	-	4,096.15
6/1/10	46	4,096.16	-	4,096.16
9/1/10	47	4,096.15	-	4,096.15
12/1/10	48	4,096.16	-	4,096.16
3/1/11	49	4,096.15	-	4,096.15
6/1/11	50	4,096.16	-	4,096.16
9/1/11	51	4,096.15	-	4,096.15
12/1/11	52	4,096.16	-	4,096.16
3/1/12	53	4,096.15	-	4,096.15
6/1/12	54	4,096.16	-	4,096.16
9/1/12	55	4,096.15	-	4,096.15
12/1/12	56	4,096.16	-	4,096.16
3/1/13	57	4,096.15	-	4,096.15
6/1/13	58	4,096.16	-	4,096.16
9/1/13	59	4,096.15	-	4,096.15
12/1/13	60	4,096.16	-	4,096.16
3/1/14	61	4,096.15	-	4,096.15
6/1/14	62	4,096.16	-	4,096.16
9/1/14	63	4,096.15	-	4,096.15
12/1/14	64	4,096.16	-	4,096.16
3/1/15	65	4,096.15	-	4,096.15
6/1/15	66	4,096.16	-	4,096.16
9/1/15	67	4,096.15	-	4,096.15
12/1/15	68	4,096.16	-	4,096.16
3/1/16	69	4,096.15	-	4,096.15
6/1/16	70	4,096.16	-	4,096.16
9/1/16	71	4,096.15	-	4,096.15
12/1/16	72	4,096.16	-	4,096.16
3/1/17	73	4,096.15	-	4,096.15
6/1/17	74	4,096.16	-	4,096.16
9/1/17	75	4,096.15	-	4,096.15
12/1/17	76	4,096.16	-	4,096.16
3/1/18	77	4,096.15	-	4,096.15
6/1/18	78	4,096.16	-	4,096.16
9/1/18	79	4,096.15	-	4,096.15
12/1/18	80	4,096.16	-	4,096.16
3/1/19	81	4,096.15	-	4,096.15
6/1/19	82	4,096.16	-	4,096.16
9/1/19	83	4,096.15	-	4,096.15
12/1/19	84	4,096.16	-	4,096.16
3/1/20	85	4,096.15	-	4,096.15

## Quarterly Debt Service Schedule

Date	#	Principa	Interest	Total
6/1/20	86	4,096.16	-	4,096.16
9/1/20	87	4,096.15	-	4,096.15
12/1/20	88	4,096.16	-	4,096.16
3/1/21	89	4,096.15	-	4,096.15
6/1/21	90	4,096.16	-	4,096.16
9/1/21	91	4,096.15	-	4,096.15
12/1/21	92	4,096.16	-	4,096.16
3/1/22	93	4,096.15	-	4,096.15
6/1/22	94	4,096.16	-	4,096.16
9/1/22	95	4,096.15	-	4,096.15
12/1/22	96	4,096.16	-	4,096.16
3/1/23	97	4,096.15	-	4,096.15
6/1/23	98	4,096.16	-	4,096.16
9/1/23	99	4,096.15	-	4,096.15
12/1/23	100	4,096.16	-	4,096.16
3/1/24	101	4,096.15	-	4,096.15
6/1/24	102	4,096.16	-	4,096.16
9/1/24	103	4,096.15	-	4,096.15
12/1/24	104	4,096.16	-	4,096.16
3/1/25	105	4,096.15	-	4,096.15
6/1/25	106	4,096.16	-	4,096.16
9/1/25	107	4,096.15	-	4,096.15
12/1/25	108	4,096.16	-	4,096.16
3/1/26	109	4,096.15	-	4,096.15
6/1/26	110	4,096.16	-	4,096.16
9/1/26	111	4,096.15	-	4,096.15
12/1/26	112	4,096.16	-	4,096.16
3/1/27	113	4,096.15	-	4,096.15
6/1/27	114	4,096.16	-	4,096.16
9/1/27	115	4,096.15	-	4,096.15
12/1/27	116	4,096.16	-	4,096.16
3/1/28	117	4,096.15	-	4,096.15
6/1/28	118	4,096.16	-	4,096.16
9/1/28	119	4,096.15	-	4,096.15
12/1/28	120	4,096.16	-	4,096.16
3/1/29	121	4,096.15	-	4,096.15
6/1/29	122	4,096.16	-	4,096.16
9/1/29	123	4,096.15	-	4,096.15
12/1/29	124	4,096.16	-	4,096.16
3/1/30	125	4,096.15	-	4,096.15
6/1/30	126	4,096.16	-	4,096.16
9/1/30	127	4,096.15	-	4,096.15
12/1/30	128	4,096.16	-	4,096.16
3/1/31	129	4,096.15	-	4,096.15
6/1/31	130	4,096.16	-	4,096.16
9/1/31	131	4,096.15	-	4,096.15
12/1/31	132	4,096.16	-	4,096.16
3/1/32	133	4,096.15	-	4,096.15
6/1/32	134	4,096.16	-	4,096.16

## Quarterly Debt Service Schedule

Date		Principal	Interest	Total
9/1/32	135	4,096.15	-	4,096.15
12/1/32	136	4,096.16	-	4,096.16
3/1/33	137	4,096.15	-	4,096.15
6/1/33	138	4,096.16	-	4,096.16
9/1/33	139	4,096.15	-	4,096.15
12/1/33	140	4,096.16	-	4,096.16
3/1/34	141	4,096.15	-	4,096.15
6/1/34	142	4,096.16	-	4,096.16
9/1/34	143	4,096.15	-	4,096.15
12/1/34	144	4,096.16	-	4,096.16
3/1/35	145	4,096.15	-	4,096.15
6/1/35	146	4,096.16	-	4,096.16
9/1/35	147	4,096.15	-	4,096.15
12/1/35	148	4,096.16	-	4,096.16
3/1/36	149	4,096.15	-	4,096.15
6/1/36	150	4,096.16	-	4,096.16
9/1/36	151	4,096.15	-	4,096.15
12/1/36	152	4,096.16	-	4,096.16
3/1/37	153	4,096.15	-	4,096.15
6/1/37	154	4,096.16	-	4,096.16
9/1/37	155	4,096.15	-	4,096.15
12/1/37	156	4,096.16	-	4,096.16
		<b>639000.39</b>	<b>0.00</b>	<b>639000.39</b>

Summary Statistics:		
Average Annual Cost -		\$15,875.79
Average Life -		20.875
Average Interest Rate -		0.0000%
Net Interest Cost (NIC)		0.0000%
True Interest Cost (TIC)		0.0000%
Tax Yield (I.R.C. Section 148)		0.0000%
All-in Yield (AIC)		0.0000%
Data for Form 8038:		
	Line 19	Line 20
(a)	12/1/37	N/A
(b)	0.0000%	N/A
(c)	4,096.16	\$639,000.00
(d)	\$4,096.16	\$639,000.00
(e)	N/A	20.875
(f)	N/A	0.0000%
(g)	N/A	0.0000%

WV MUNICIPAL BOND COMMISSION  
 Suite 337 Building 3  
 1800 Washington St. E  
 State Capitol Complex  
 Charleston, WV 25305  
 (304) 348-3971

NEW ISSUE REPORT FORM

Date of Report: 1-6-98

(See Reverse for Instructions)

ISSUER & ISSUE: <u>City of Summersville Water and Sewer Revenue Bonds, Series 1998A</u>	
ADDRESS: <u>400 North Broad Street Summersville</u>	COUNTY: <u>Nicholas</u>
PURPOSE: <u>New Money</u> <input checked="" type="checkbox"/> <u>X</u>	
OF ISSUE: <u>Refunding</u> <input type="checkbox"/> Refunds issue(s) dated: _____	
ISSUE DATE: <u>1-6-98</u>	CLOSING DATE: <u>1-6-98</u>
ISSUE AMOUNT: \$ <u>639,000</u>	RATE: <u>0.90</u>
1st DEBT SERVICE DUE: <u>3-1-99</u>	1st PRINCIPAL DUE: <u>3-1-99</u>
1st DEBT SERVICE AMOUNT: <u>4,096.15</u>	PAYING AGENT: _____
ISSUERS	UNDERWRITERS
BOND COUNSEL: <u>Vaughan &amp; Withrow</u>	BOND COUNSEL: _____
Contact Person: <u>Tom Withrow</u>	Contact Person: _____
Phone: <u>342-3900</u>	Phone: _____
CLOSING BANK: _____	ESCROW TRUSTEE: _____
Contact Person: _____	Contact Person: _____
Phone: _____	Phone: _____
KNOWLEDGEABLE ISSUER CONTACT	OTHER: _____
Contact Person: <u>Ron Hancock</u>	Contact Person: _____
Position: <u>Recorder</u>	Function: _____
Phone: <u>872-1211</u>	Phone: _____
DEPOSITS TO MBC AT CLOSE: Accrued Interest: _____ Days \$ _____	
By <input type="checkbox"/> Wire	Capitalized Interest: _____ \$ _____
<input type="checkbox"/> Check	Reserve Account: _____ \$ _____
<input type="checkbox"/> IGT	Other: _____ \$ _____
REFUNDS & TRANSFERS BY MBC AT CLOSE:	
By <input type="checkbox"/> Wire	To Escrow Trustee: _____ \$ _____
<input type="checkbox"/> Check	To Issuer: _____ \$ _____
<input type="checkbox"/> IGT	To CIF-State Treasury _____ \$ _____
	To Other: _____ \$ _____
NOTES: <u>Infrastructure Council Loan</u>	
FOR MUNICIPAL BOND COMMISSION USE ONLY:	
DOCUMENTS REQUIRED: _____	
TRANSFERS REQUIRED: _____	

\$639,000  
THE CITY OF SUMMERSVILLE  
WATER AND SEWER SYSTEM REVENUE BONDS  
(WEST VIRGINIA INFRASTRUCTURE AND JOB DEVELOPMENT COUNCIL)  
SERIES 1998 A

CROSS-RECEIPT FOR BONDS AND BOND PROCEEDS

The undersigned, DANIEL B. YONKOSKY, Director of the West Virginia Water Development Authority (the "Authority"), and J. STEVEN LeROSE, Mayor of The City of Summersville (the "Issuer"), hereby certify as follows:

1. On the 6<sup>th</sup> day of January, 1998, at 180 Association Drive, Charleston, West Virginia, the Authority received the entire original issue of \$639,000 in aggregate principal amount of The City of Summersville, West Virginia, Water and Sewer System Revenue Bonds (West Virginia Infrastructure and Job Development Council), Series 1998 A (the "Series 1998 A Bonds"). The Series 1998 A Bonds, as so received on original issuance, are dated January 6, 1998.

2. At the time of such receipt of the Series 1998 A Bonds, the Series 1998 A Bond AR-1 had been executed by J. Steven LeRose, as Mayor, by his manual signature and attested by Ron Hancock, as City Recorder, by his manual signature, and the official seal of the Issuer had been impressed upon the Series 1998 A Bond, and had been authenticated by One Valley Bank, National Association, as Registrar.

3. The Issuer has received and hereby acknowledges receipt from the Authority, as the original purchaser of the Series 1998 A Bonds, the sum of \$50,280.00, as the initial disbursement of the proceeds of the Series 1998 A Bonds. The balance of such proceeds shall be disbursed in accordance with the terms of the Loan Agreement.

In Witness Whereof, each of the parties has caused this instrument to be executed as of the 6<sup>th</sup> day of January, 1998.

WEST VIRGINIA WATER  
DEVELOPMENT AUTHORITY

By   
Director

THE CITY OF SUMMERSVILLE

By   
Mayor

CITY OF SUMMERSVILLE  
400 NORTH BROAD STREET  
P.O. BOX 525  
SUMMERSVILLE, WEST VIRGINIA 26651

JOHN STEVEN LEROSE - MAYOR

TELEPHONE (304) 872-1211  
TELECOPY (304) 872-2236

ORDINANCE NO. 96-002

AN ORDINANCE INCREASING WATER AND SEWER RATES TO BE APPLICABLE TO THE ENTIRE TERRITORY SERVED BY THE CITY OF SUMMERSVILLE FOR GENERAL, DOMESTIC, COMMERCIAL AND INDUSTRIAL SERVICE.

WHEREAS, the City of Summersville owns and operates a combined water and sewer system (the "System") situate in and near the City of Summersville, Nicholas County, West Virginia; and

WHEREAS, in order to provide for the operation and maintenance of the System, to pay the amounts required for debt service related to the System and provide for improvements and expansions of the System, the Council of the City of Summersville has determined that it is necessary to increase the rates charged by the City for water and sewer service.

NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SUMMERSVILLE, that the following rates and charges for the furnishing of water and sewer service shall become effective on the dates indicated below:

**SUMMERSVILLE WATER AND SEWER SYSTEM  
WATER SYSTEM TARIFF**

**APPLICABILITY**

Applicable in the entire territory served.

**AVAILABILITY OF SERVICE**

Available for general, domestic, commercial and industrial service.

**WATER TAP FEES**

A \$300.00 tap fee will be charged to any new customers requesting service that have a meter of 5/8" or 3/4" in size. Meters 1" or larger will be charged \$300.00 or actual cost, whichever is greater.

**DISCONNECTIONS AND RECONNECTIONS**

Disconnection and reconnection charge of delinquent accounts shall be \$10.00 payable in advance, or at such time the service is restored. Service shall not be discontinued until after at least twenty-four hours written notice to the customer.

**DELAYED PAYMENT PENALTY**

The above rates are net. On all accounts not paid in full within twenty days of billing date, ten percent will be added to the net amount shown.

**SECURITY DEPOSIT**

A minimum cash deposit of \$25.00 shall be required from each new customer to secure payment of bills.

Interest at the rate of a minimum of 4% per annum will be paid on each deposit in cash or by crediting the customer's account. Deposits will be retained for one year or until the customer establishes a satisfactory credit standing with the City. In any event, the deposit will be refunded upon discontinuance of service, if account is current. Upon payment in full of all sums due City by customer for water service, City, in its sole discretion, may apply said deposit to any other sum due and owing City by customer.

## FIRE HYDRANTS

A fee of \$3.00 per month per fire hydrant shall be charged to the City for public fire protection.

A fee of \$3.00 per fire hydrant will be charged to the fire departments outside City limits that provide fire protection for that service area.

## FIRE SUPPRESSION SYSTEMS

A fee of \$3.00 per month will be charged to customers for private non-metered fire suppression service.

# SUMMERSVILLE WATER AND SEWER SYSTEM SEWER SYSTEM TARIFF

## APPLICABILITY

Applicable in the entire territory served.

## AVAILABILITY OF SERVICE

Available for general, domestic, commercial and industrial service.

## RATES (based on metered water usage)

(See attached list).

## MINIMUM CHARGE (See attached list).

Charges for sewer customers not on City water shall pay a minimum sewer charge based on existing rates.

## SEWER TAP FEES

A \$300.00 tap fee will be charged to any new customers requesting service.

## DISCONNECTIONS AND RECONNECTIONS

Disconnection and reconnection charge of delinquent accounts shall be \$10.00 payable in advance, or at such time the service is restored. Service shall not be discontinued until after at least twenty-four hours written notice to the customer.

## SECURITY DEPOSIT

A minimum cash deposit of \$25.00 shall be required from each new customer to secure payment of bills.

Interest at the rate of a minimum of 4% per annum will be paid on each deposit in cash or by crediting the customer's account. Deposits will be retained for one year or until the customer establishes a satisfactory credit standing with the City. In any event, the deposit will be refunded upon discontinuance of service, if account is current. Upon payment in full of all sums due City by customer for sewer service, City, in its sole discretion, may apply said deposit to any other sum due and owing City by customer.

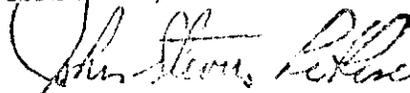
**DELAYED PAYMENT PENALTY**

The above rates are net. On all accounts not paid in full within twenty days of billing date, ten percent will be added to the net amount shown.

Passed on first reading September 23, 1996.

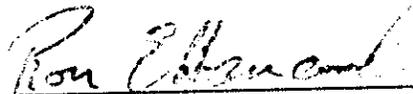
Public Hearing held October 15, 1996.

Enacted on second reading October 15, 1996.



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Mayor, City of Summersville



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Recorder, City of Summersville

**SUMMERSVILLE WATER WORKS  
PROPOSED RATE SHEET**

2.5% Increase  
Effective 7-1-99

2.5% Increase  
Effective 7-1-98

5% Increase  
Effective 7-1-97

25% Increase  
Effective 1-1-97

CURRENT RATE

WATER RATES: (PER THOUSAND)

	25% Increase Effective 1-1-97	5% Increase Effective 7-1-97	2.5% Increase Effective 7-1-98	2.5% Increase Effective 7-1-99
FIRST	5.86	6.15	6.30	6.46
NEXT	3.45	3.62	3.71	3.80
NEXT	3.10	3.26	3.34	3.42
NEXT	2.76	2.90	2.97	3.04
NEXT	2.06	2.16	2.21	2.27
NEXT	2.06	2.16	2.21	2.27

2.5% Increase  
Effective 7-1-99

2.5% Increase  
Effective 7-1-98

5% Increase  
Effective 7-1-97

20% Increase  
Effective 1-1-97

CURRENT RATE

SEWER RATES: (PER THOUSAND)

	20% Increase Effective 1-1-97	5% Increase Effective 7-1-97	2.5% Increase Effective 7-1-98	2.5% Increase Effective 7-1-99
FIRST	5.29	5.55	5.69	5.83
NEXT	3.97	4.17	4.27	4.38
NEXT	3.64	3.82	3.92	4.02
NEXT	3.31	3.46	3.55	3.64
NEXT	3.11	3.27	3.35	3.43
NEXT	3.11	3.27	3.35	3.43

NEW MINIMUM  
RATES:

	Effective 1-1-97	Effective 7-1-97	Effective 7-1-98	Effective 7-1-99
FOR 5/8" METER:	11.73	12.31	12.62	12.93
3/4" METER:	16.54	17.36	17.80	18.24
1" METER:	31.01	32.56	33.38	34.21
1 1/2" METER:	68.91	72.36	74.17	76.02
2" METER:	117.14	122.99	126.07	129.22
3" METER:	254.95	267.70	274.39	281.25
4" METER:	482.35	506.47	519.13	532.11
6" METER:	1033.60	1085.28	1112.41	1140.22
SEWER MINIMUM:	10.58	11.11	11.39	11.67

OTHER RATES:

WATER DEPOSIT:	30.00	25.00	25.00	25.00
SEWER DEPOSIT:	0.00	25.00	25.00	25.00
WATER TAP FEES:	300.00	300.00	300.00	300.00
1" METERS & LARGER:	300.00	300.00	\$300 OR ACTUAL COSTS	\$300 OR ACTUAL COSTS
(ALL CUSTOMERS)	300.00	300.00	300.00	300.00

PUBLIC SERVICE COMMISSION  
OF WEST VIRGINIA  
CHARLESTON

Entered: December 18, 1997

CASE NO. 97-0704-W-CN

CITY OF SUMMERSVILLE,  
a municipal corporation.

Application for a certificate of convenience and necessity to construct a waterline extension project to provide Glade Creek and surrounding areas with a potable water supply.

RECOMMENDED DECISION

On June 2, 1997, the City of Summersville (Summersville) filed an application for a certificate of convenience and necessity to construct a waterline extension to provide Glade Creek and the surrounding areas with a potable water supply, and for approval of the proposed financing for the project. The project consists of approximately 4,600 linear feet (LF) of 16-inch ductile iron water pipe, 24,150 LF of 8-inch PVC water pipe, 9,556 LF of 6-inch PVC water pipe, 4,300 LF of 2-inch PVC water pipe, hydrants, meter settings and the necessary valves and appurtenances required to provide the proposed service.

By Order dated June 2, 1997, the Commission directed that the City give notice of the filing of its application by publishing a copy of said Order, once, in a newspaper duly qualified by the Secretary of State, published and generally circulated in Nicholas County. The notice provided that anyone desiring to object to the application could do so by filing a written protest with the Public Service Commission within thirty (30) days of the date of said publication, and, if no protests were received within the thirty (30) day protest period, the Commission could waive formal hearing and grant the certificate based upon its review of the evidence submitted with the application.

On June 11, 1997, Summersville filed an affidavit of publication verifying that the Notice of Filing was published on June 5, 1997, in The Nicholas Chronicle, a newspaper published and generally circulated in Nicholas County. No protests have been filed.

By Order dated June 24, 1997, this matter was referred to the Division of Administrative Law Judges for a decision to be rendered on or before December 29, 1997.

On July 17, 1997, Staff Attorney Cassius H. Toon filed the Final Joint Staff Memorandum, attaching the Final Internal Memorandum from Utilities Analyst Randy Lengyel and Technical Analyst Ingrid Ferrell, both of the Water and Wastewater Division. Staff indicated that it was seeking additional information from Summersville and that, upon receiving this additional information, it would submit a recommendation.

On August 21, 1997, Staff Attorney Toon filed a Further Final Joint Staff Memorandum, attaching the Final Internal Memorandum from Mr. Lengyel and Ms. Ferrell.

Commission Staff indicated that the project is estimated to cost approximately \$1,711,000, as follows:

Construction	\$1,293,600
Construction Contingency	63,400
Engineering	156,500
Legal	15,000
Land and Right-of-way	20,000
Bond Council	15,000
Administration	20,000
Accounting	4,500
Craigsville PSD-Tank	70,000
Capitalized Interest	20,000
Interim Financing	10,000
Project Contingency	<u>23,000</u>
Total Project Cost	\$1,711,000

Staff further advised that Summersville plans to finance its project with a \$239,000 Small Cities Block grant (SCB), a \$743,000 West Virginia infrastructure and Job Development Council (WVIJDC) grant and a \$639,000 WVIJDC loan with a 0% interest rate and a forty (40) year term. Summersville has received all of the commitment letters from the above-mentioned parties.

Summersville has passed a rate ordinance increasing its rates to \$6.75, per 1,000 gallons of water used for the customers on the Glade Creek extension. As a result of this increase, there will be no bill rendered for less than \$13.50 per month. The City's current customers will not receive an increase due to this project. The ordinance became final on July 19, 1997, with no protests filed. The approved rates will be implemented at the completion of construction.

Staff reviewed the operation and maintenance expenses, and it does not have a problem with the calculations used to determine the transmission and distribution expenses, billing and collection expenses and administrative expenses, since these costs were determined by using the expenses based on the current system. Staff opined that the estimates may be slightly high because the extension is new and will not require the same maintenance as the current system. However, it is important to maintain the entire system

regardless of age. Therefore, Staff does not feel it necessary to reduce the O & M expenses since rates are sufficient to cover these costs.

Staff further indicated that it is not necessary to adjust the source of supply expenses from \$18,898 annually to \$18,782 annually, since this is only a difference of \$116, which is not significant. However, the rate used to determine this expense is significant. Summersville will purchase water from the Craigsville Public Service District (District) for this extension. In its Rule 42 Exhibit, Summersville calculated its purchased water costs using a bulk rate of \$1.88 per 1,000 gallons of water purchased. However, since the District has an approved rate of \$1.87 per 1,000 gallons of water purchased for bulk water sales in its tariff, the District must charge Summersville \$1.87 per 1,000 gallons.

The Glade Creek extension has the potential to serve approximately 180 customers who have had problems with their wells and cisterns for many years. The extension includes the Glade Creek Elementary School, which has had to close for periods of time due to water outages. Staff opined that this project will alleviate the water problems in this area and that Summersville has clearly demonstrated the need to install the proposed water system.

This project cannot move forward without the District constructing a main extension to connect Summersville's waterline. The District plans to install a 150,000-gallon water tank as part of its extension, which also will benefit Summersville's customers. Summersville has agreed to pay for a portion of the cost associated with this tank. A master meter will be installed close to the storage tank. Finally, Staff indicated that its review of the plans and specifications reveal no conflict with the rules and regulations of the Public Service Commission. Summersville has obtained Permit No. 13,331 for the proposed project from the Office of Environmental Health Services. Staff believes that this permit indicates that the project is designed in accordance with current engineering practices.

Staff has finished its review of the engineering and financial information filed in this case and believes that the project is both necessary and convenient. Therefore, since no protests were filed, Staff has recommended that the Commission approve Summersville's application for a certificate of public convenience and necessity, without hearing. Staff also recommended that the Commission approve the funding package, as detailed in the Memorandum. Finally, Staff recommends that, if any changes in the scope of the project or increased financing occurs, the Commission require that Summersville seek permission from the Public Service Commission before commencing construction of the project.

On November 12, 1997, Summersville filed a letter from One Valley Bank of Summersville, Inc., approving interim financing for the Glade Creek water project in the amount of \$500,000.

In a Further Final Memorandum dated November 25, 1997, Staff Attorney Toon advised that Summersville had submitted additional information concerning interim financing, for Commission approval. This interim financing, as is evidenced by the letter submitted on November 12, 1997, will be procured through a loan from One Valley Bank of Summersville, Inc., in the amount of \$500,000, at an interest rate of 10%. Mr. Toon further

explained that Summersville has passed a rate ordinance. Since the interim financing loan amount is less than the loan proposed in the certificate application, Staff does not believe that the proposed interim financing will adversely impact the project, and Summersville will have adequate cash flow to make its debt service payments for the interim financing. Therefore, Staff recommends that the Commission approve Summersville's request for interim financing.

#### FINDINGS OF FACT

1. On June 2, 1997, Summersville filed an application for a certificate of public convenience and necessity to construct a waterline extension to provide Glade Creek and the surrounding areas with a potable water supply, and for approval of the proposed financing for the project. The project consists of approximately 4,600 LF of 16-inch ductile iron water pipe, 24,150 LF of 8-inch PVC water pipe, 9,556 LF of 6-inch PVC water pipe, 4,300 LF of 2-inch PVC water pipe, hydrants, meter settings and the necessary valves and appurtenances required to provide the proposed service. (See, Application).
2. The Commission required that the Applicant give notice of the filing of the application in accordance with West Virginia Code §24-2-11. The Notice of Filing provided that anyone who wished to make protest to the application must do so, in writing, within thirty (30) days of the date of publication. (See, Order dated June 2, 1997).
3. Summersville published the Notice of Filing in a newspaper published and generally circulated in Nicholas County on June 5, 1997. No one has protested the application. (See, Affidavits of Publication submitted June 11, 1997 and case file generally).
4. Commission Staff, noting that no one had protested the application after proper publication and that the project would eliminate problems which customers in the Glade Creek area have had with their wells and cisterns for many years, including water outages which required that officials close the Glade Creek Elementary School, recommended approving the application. (See, Further Final Joint Staff Memorandum filed August 21, 1997).
5. The Office of Environmental Health Services approved the project by granting Summersville Permit No. 13,331. (See, Further Final Joint Staff Memorandum filed August 21, 1997).
6. The project will cost an estimated \$1,711,000, to be funded with a \$329,000 SCB grant, a \$743,000 WVIJDC grant and a \$639,000 WVIJDC loan bearing no interest over its 40-year term. (See Further Final Joint Staff Memorandum with attachments, filed August 21, 1997).
7. Summersville has obtained letters of commitment from all of the permanent financing sources, and it has obtained a letter of commitment for interim financing in the amount of \$500,00 from One Valley Bank, all of

which Commission Staff has recommended approving. (See, Further Final Joint Staff Memorandum with attachment, filed August 21, 1997; November 25, 1997).

#### CONCLUSIONS OF LAW

The Administrative Law Judge is of the opinion and finds that:

1. Since the customers in this area have experienced problems with their wells and cisterns for years; since the extension will include the Glade Creek Elementary School, which has had to close for periods of time due to water outages; and since this project will alleviate the water problems in the area, public convenience and necessity require the proposed project.

2. The proposed financing, including the interim financing, is reasonable and should be approved.

#### ORDER

IT IS, THEREFORE, ORDERED that the City of Summersville's application for a certificate of convenience and necessity to construct a waterline extension to provide Glade Creek and the surrounding areas with potable water, filed on June 2, 1997, be, and the same hereby is, granted.

IT IS FURTHER ORDERED that the proposed financing for the project, consisting of a \$329,000 SCB grant, a \$743,000 WVIJDC grant and a \$639,000 WVIJDC loan at an interest rate of 0% over a 40-year term, and the interim financing, consisting of a revolving line of credit in the amount of \$500,000, with the One Valley Bank of Summersville, Inc., at a 10% annual percentage rate, be, and the same hereby are, approved.

IT IS FURTHER ORDERED that, if the costs, funding or scope of the project change for any reason, the City of Summersville shall petition the Commission for consent and approval for such changes prior to commencing construction.

The Executive Secretary is hereby ordered to serve a copy of this order upon the Commission by hand delivery, and upon all parties of record by United States Certified Mail, return receipt requested.

Leave is hereby granted to the parties to file written exceptions supported by a brief with the Executive Secretary of the Commission within fifteen (15) days of the date this order is mailed. If exceptions are filed, the parties filing exceptions shall certify to the Executive Secretary that all parties of record have been served said exceptions.

If no exceptions are so filed this order shall become the order of the Commission, without further action or order, five (5) days following the expiration of the aforesaid fifteen (15) day time period, unless it is ordered stayed or postponed by the Commission.

Any party may request waiver of the right to file exceptions to an Administrative Law Judge's order by filing an appropriate petition in writing with the Secretary. No such waiver will be effective until approved by order of the Commission, nor shall any such waiver operate to make any Administrative Law Judge's Order or Decision the order of the Commission sooner than five (5) days after approval of such waiver by the Commission.



Robert W. Glass  
Administrative Law Judge

RWG:jas

PUBLIC SERVICE COMMISSION  
OF WEST VIRGINIA  
CHARLESTON

At a session of the PUBLIC SERVICE COMMISSION OF WEST VIRGINIA, in the City of Charleston on the 24th day of December, 1997.

CASE NO. 97-0704-W-CN

CITY OF SUMMERSVILLE,  
a municipal corporation.

Application for a certificate of convenience and necessity to construct a waterline extension project to provide Glade Creek and surrounding areas with a potable water supply.

COMMISSION ORDER WAIVING EXCEPTIONS  
TO RECOMMENDED DECISION

On June 2, 1997, the City of Summersville filed an application for a certificate of convenience and necessity to construct a waterline extension to provide Glade Creek and the surrounding areas with a potable water supply.

By Recommended Decision entered December 18, 1997, Administrative Law Judge Robert W. Glass granted the requested certificate and approved the proposed financing for the project.

On December 24, 1997, Gregory A. Tucker, Esq., Counsel for the City of Summersville, petitioned the Commission to waive the fifteen (15) day exception period.

West Virginia Code §24-1-9 provides a time period of at least twenty (20) days from the date of a recommended order until it become effective. According to West Virginia Code §24-1-9(c), at least fifteen (15) days must be afforded the parties within which to file exceptions. In addition, §24-1-9(e) provides that when no exceptions are filed within the specified time period, the Commission shall have an additional five (5) days within which to stay or postpone the order.

The Commission is therefore of the opinion and belief that said petition for waiver received by the Commission on December 24, 1997 should be granted.

IT IS, THEREFORE, ORDERED that the requested waiver be, and the same hereby is, granted.

IT IS FURTHER ORDERED that the Administrative Law Judge's Recommended Decision in this matter become final (5) days after the date of this order.

A True Copy, Teste:



Sandra Neal  
Executive Secretary

ft

\$639,000.00  
THE CITY OF SUMMERSVILLE, WEST VIRGINIA  
WATER AND SEWER SYSTEM REVENUE BONDS  
(WEST VIRGINIA INFRASTRUCTURE AND JOB DEVELOPMENT COUNCIL)  
SERIES 1998 A

GENERAL CERTIFICATE OF:

1. TERMS
2. NO LITIGATION
3. SALE OF BONDS; SIGNATURES
4. DELIVERY AND PAYMENT
5. NO ADVERSE FINANCIAL CHANGE; INDEBTEDNESS
6. MEETINGS
7. INCUMBENCY AND OFFICIAL NAME
8. CERTIFICATIONS
9. SPECIMEN BOND
10. CONFLICT OF INTEREST
11. CERTIFICATION OF COPIES OF DOCUMENTS
12. RATES
13. GOVERNMENTAL APPROVALS AND BIDDING
14. BOND PROCEEDS
15. PUBLICATION AND PUBLIC HEARING ON BOND ORDINANCE
16. PRIVATE USE OF FACILITIES
17. NO FEDERAL GUARANTY
18. LAND AND RIGHTS-OF-WAY
19. LOAN AGREEMENT

We, the undersigned MAYOR and the undersigned RECORDER of The City of Summersville, West Virginia (the "City"), and the undersigned City Attorney, hereby certify in connection with the \$639,000 aggregate principal amount of The City of Summersville, West Virginia Water and Sewer System Revenue Bonds (West Virginia Infrastructure and Job Development Council), Series 1998 A (the "Series 1998 A Bonds"), as follows:

1. TERMS: All capitalized words and terms used in this Certificate and not otherwise defined herein shall have the same meanings as in the Ordinance of the City, enacted by the Council of the City on August 11, 1997, and effective on August 25, 1997, and a Supplemental Resolution adopted by the Council of the City on January 2, 1998 (collectively, the "Ordinance"), and the Loan Agreement entered into between the City and the West Virginia Water

Development Authority acting on behalf of the West Virginia Infrastructure and Job Development Council (the "Infrastructure Council"), dated January 6, 1998.

2. NO LITIGATION: No controversy or litigation of any nature is now pending, or, to the knowledge of any of the undersigned, threatened, restraining, enjoining or affecting in any manner the issuance and delivery of the Series 1998 A Bonds; the acquisition and construction of the Project; or the collection of the gross revenues of the combined water and sewer system (the "System") or the pledge of the Net Revenues to the payment of the principal of and interest on the Series 1998 A Bonds; nor questioning the proceedings and authority by which the City authorized the issuance and sale of the Series 1998 A Bonds; nor questioning the validity or enforceability of the Series 1998 A Bonds, the Ordinance or the Loan Agreement or any agreement or instrument relating thereto, used or contemplated by the Loan Agreement or any provisions made or authorized for the payment of the Series 1998 A Bonds; nor questioning the valid existence of the City or the authority or titles of the Mayor, Recorder and the members of the Council and other officials of the City to their respective offices; nor questioning any proceeding, procedure, action or thing followed, taken or done in connection with the Series 1998 A Bonds.

3. SALE OF SERIES 1998 A BONDS; SIGNATURES: The Series 1998 A Bonds were sold to the West Virginia Water Development Authority (the "Authority") at an agreed purchase price of \$639,000. As of the date hereof, the Series 1998 A Bonds were signed by the manual signature of the Mayor, and the official seal of the City, which seal is impressed upon this Certificate, was impressed thereon and attested by the manual signature of the City Recorder.

4. DELIVERY AND PAYMENT: The undersigned Mayor did, on the date hereof, deliver to the Authority, the entire issue of the Series 1998 A Bonds, as one bond numbered AR-1. Payment of the proceeds of the Series 1998 A Bonds in the amount of \$50,280.00 shall be advanced on the date hereof, and the balance of the proceeds shall be disbursed to the City as set forth in the Loan Agreement.

5. NO ADVERSE FINANCIAL CHANGE; INDEBTEDNESS: There has been no adverse change in the financial condition of the City since June 30, 1997. Except for the City's 1967 Water and Sewer Note, Series 1990 A Bonds and Series 1991 A Bonds, which share a first lien on the Net Revenues of the System with the Series 1998 A Bonds, and the City's Series 1977 Bonds, Series 1990 B Bonds and Series 1991 B Bonds, which share a second lien on the Net Revenues of the System, there is no indebtedness or obligation of the City outstanding and unpaid or for which full and irrevocable provision for payment has not been made which has priority over or ranks on a parity with the Series 1998 A Bonds as to the sources of and security for payment. The revenues of the City's combined water and sewer system meet the parity test for the issuance of parity bonds, the City's Independent Certified Public Accountant has certified that the parity test has been met and the City has received consent from the holders of the prior bonds for the issuance of the Series 1998 A Bonds. The City is in compliance with all requirements and covenants relating to all outstanding water and sewer bonds issued by the City.

6. MEETINGS: All actions, ordinances, resolutions, orders and agreements taken by and entered into by or on behalf of the City in any way connected with the issuance of the Series 1998 A Bonds were authorized or adopted at meetings of the Council of the City duly and regularly called and held pursuant to the City Charter and Rules of Procedure of the Council of the City and all applicable statutes, including Chapter 6, Article 9A of the West Virginia Code of 1931, as amended, and a quorum of duly elected, qualified and acting members of the Council was present and acting at all times during all such meetings.

7. INCUMBENCY AND OFFICIAL NAME: The proper corporate title of the City is "The City of Summersville" and it is a municipal corporation of the State of West Virginia, in Nicholas County of said State. The names and dates of commencement and termination of current terms of office of the Mayor, City Recorder, members of Council are as follows:

City Council

Name	Office	Date Term of Office Began	Date Term of Office Ends
J. Steven LeRose	Mayor	July 1, 1995	June 30, 1999
Ron Hancock	Recorder	July 1, 1995	June 30, 1999
Michael Hughes	Councilman	July 1, 1995	June 30, 1999
Donna Mazzei	Councilwoman	July 1, 1995	June 30, 1999
Fred Fogelman	Councilman	July 1, 1995	June 30, 1999
Carroll T. Lay	Councilman	July 1, 1995	June 30, 1999
Terry Lewis	Councilman	July 1, 1995	June 30, 1999
Joe Pugh	Councilman	July 1, 1995	June 30, 1999
Mary McCallister	Councilwoman	July 1, 1995	August 12, 1997
Irene Harrah	Councilwoman	November 10, 1997	June 30, 1999

The duly appointed and acting City Attorney is Gregory Tucker, Attorney at Law, Summersville, West Virginia.

8. CERTIFICATIONS: (1) the City has duly performed all of its obligations to be performed at or prior to the Closing and each of the City's representations and warranties contained in the Loan Agreement is true as of the Closing; (2) the City has authorized, by all necessary action, the execution, delivery, receipt and due performance of the Series 1998 A Bonds, the Ordinance and any and all such other agreements and documents as may be required to be enacted, adopted, executed, delivered and received by the City in order to carry out, give effect to and consummate the transactions contemplated by the Loan Agreement; and (3) the enactment and due performance of the Ordinance and the execution, delivery, receipt and due performance of the Series 1998 A Bonds and the other agreements contemplated by the Loan Agreement, under the circumstances contemplated thereby, and the City's compliance with the provisions thereof, will not conflict with or constitute on the City's part a breach of or a default

under any existing law, court or administrative regulation, decree or order or any agreement, indenture, mortgage, lease or other instrument to which the City is subject or by which the City is or may be bound.

9. SPECIMEN BOND: Attached hereto as Exhibit A is a specimen of the Series 1998 A Bond which, except as to execution and authentication, is identical in all respects to such Series 1998 A Bond this day delivered to the Authority and being substantially in the form prescribed in the Ordinance.

10. CONFLICT OF INTEREST: No officer or employee of the City has a substantial financial interest, direct, indirect or by reason of ownership of stock in any corporation, in any contract with the City and the sale of any land, materials, supplies or services to the City, or to any contractor supplying the City, relating to the Series 1998 A Bonds, the Ordinance or the Loan Agreement, including without limitation, with respect to the depository bank. For purposes of this paragraph, a "substantial financial interest" shall include, without limitation, an interest amounting to more than 5% of the particular business enterprise or contract.

11. CERTIFICATION OF COPIES OF DOCUMENTS: The copies of the below-listed documents hereto attached or delivered herewith or heretofore delivered are true, correct and complete copies of the originals of the documents of which they purport to be copies, and such original documents are in full force and effect and have not been repealed, rescinded, amended or changed in any way unless modification appears from later documents also listed below:

- Loan Agreement
- Bond Ordinance
- Supplemental Resolution
- PSC Certificate of Convenience and Necessity
- Oaths of Office of Council Members
- Minutes of Council Meetings of July 21, August 11, August 25, 1997, and January 2, 1998
- Approval of the Project from the West Virginia Infrastructure and Jobs Development Council

12. RATES: The City has duly enacted a water and sewer rate ordinance on June 9, 1997, setting rates and charges for services of the System. The time for appeal of such rate ordinance has expired and there has been no appeal thereof. The rates and charges of such rate ordinance are effective upon the sale and delivery of the Series 1998 A Bonds.

13. GOVERNMENTAL APPROVALS AND BIDDING. All applicable approvals required by law for the construction of the Project, the operation of the System and the issuance of the Series 1998 A Bonds, including, without limitation, the issuance of a certificate of convenience and necessity by the Public Service Commission of West Virginia, have been obtained and remain in full force and effect. Competitive bids, compatible with the plan of financing as described in the application to the Authority, have been obtained in accordance with

the provisions of Chapter 5, Article 22 of the West Virginia Code, and such bids remain in full force and effect.

14. BOND PROCEEDS: On the date hereof, the City received \$50,280.00 from the Authority and the Infrastructure Council, being a portion of the principal amount of the Series 1998 A Bonds and more than a de minimis amount of the proceeds of the Series 1998 A Bonds. The balance of the principal amount of the Series 1998 A Bonds will be advanced to the City as the construction of the Project progresses, in accordance with the provisions of the Loan Agreement.

15. PUBLICATION AND PUBLIC HEARING ON BOND ORDINANCE. Upon enactment of the Ordinance, an abstract of the ordinance and notice of public hearing was published as a Class II legal advertisement in the Nicholas Chronicle, a newspaper of general circulation within the City of Summersville, the first publication of which occurred not less than 10 days prior to the public hearing. At such public hearing the governing body heard the comments of all persons relating to the construction of the Project and the issuance of the Series 1998 A Bonds. No petition was filed with the governing body opposing the construction of the Project or the issuance of the Series 1998 A Bonds.

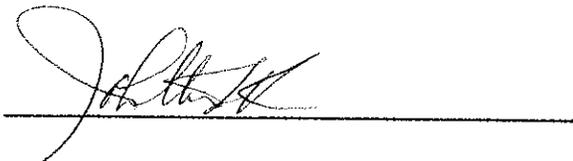
16. PRIVATE USE OF FACILITIES: The City shall at all times take, and refrain from taking, and shall not fail to take, any and all actions necessary in order to assure the initial and continued tax-exempt status of the Series 1998 A Bonds and the interest thereon. Less than 10% of the proceeds of the Series 1998 A Bonds will be used, directly or indirectly, for any private business use, and less than 10% of the payment of principal of, or the interest on, such issue, under the terms of such issue or any underlying arrangement, is, directly or indirectly, secured by any interest in property used or to be used for a private business use, payments in respect of such property, or to be derived from payments (whether or not to the City) in respect of property, or borrowed money, used or to be used for a private business use. None of the proceeds of the Series 1998 A Bonds will be used, directly or indirectly, for any private business use which is not related to the governmental use of the proceeds of the Series 1998 A Bonds, including the disproportionate related business use of the proceeds of the Series 1998 A Bonds, and none of the payment of principal on, or the interest on, such issue, under the terms of any underlying arrangement, is, directly or indirectly, secured by any interest in property used, or to be used for a private business use, payments in respect of such property or to be derived from payments (whether or not to the City) in respect of property, or borrowed money, used or to be used for a private business use with respect to such private business use, which is not related to any government use of such proceeds, including the disproportionate business use of the issue of the Series 1998 A Bonds. None of the proceeds of the issue of the Series 1998 A Bonds will be used, directly or indirectly, to make or finance loans to persons other than governmental units. For purposes of this paragraph, private business use means use, directly or indirectly, in a trade or business carried on by any person, including related persons, other than a governmental unit or other than use as a member of the general public. All of the foregoing shall be determined in accordance with and within the meaning of the Internal Revenue Code of 1986, as amended, including any successor provisions and rules and regulations thereunder (the "Code").

17. NO FEDERAL GUARANTY: The Series 1998 A Bonds are not and will not be, in whole or part, directly or indirectly, federally guaranteed within the meaning of Section 149(b) of the Code.

18. LAND AND RIGHTS-OF-WAY: All land in fee simple and all rights-of-way and easements necessary for the construction of the Project and the operation and maintenance of the System have been acquired or can and will be acquired by purchase or, if necessary, by condemnation by the City, and are adequate for such purposes and are not and will not be subject to any liens, encumbrances, reservations or exceptions that adversely affect or interfere in any way with use thereof for such purposes. The costs thereof, including any properties that may have to be acquired by condemnation are, in the opinion of the undersigned, within the ability of the City to for the same without jeopardizing the security of or payments on the Bonds.

19. LOAN AGREEMENT: As of the date hereof, (i) the representations of the City contained in the Loan Agreement are true and correct in all material respects as if made on the date hereof; (ii) the Loan Agreement does not make any untrue statement of a material fact or omit to state any material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading; (iii) to the best of the knowledge of the undersigned, no event affecting the City has occurred since the date of the Loan Agreement which should be disclosed for the purpose for which it is to used or which is necessary to disclose therein in order to make the statements and information therein not misleading; and (iv) the City is in compliance with the Loan Agreement.

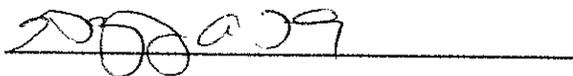
Witness our signatures and the official corporate seal of The City of Summersville, all as of the 6<sup>th</sup> day of January, 1998.



Mayor



Recorder



City Attorney

(SEAL)

CITY OF SUMMERSVILLE  
400 NORTH BROAD STREET  
P.O. BOX 525  
SUMMERSVILLE, WEST VIRGINIA 26651

JOHN STEVEN LEROSE - MAYOR

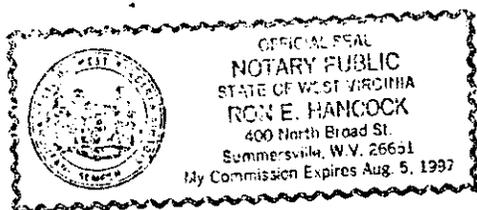
TELEPHONE (304) 872-1211  
TELECOPY (304) 872-2236

THAT I, JOHN STEVEN LeROSE, duly elected Mayor, do solemnly swear that I will uphold the Constitution of the United States, the Constitution of the State of West Virginia and Municipal Charter of the City of Summersville, and to perform the duties as Mayor for the City of Summersville to the best of my ability, so help me God.

  
\_\_\_\_\_  
JOHN STEVEN LeROSE

Taken, subscribed and sworn to before me this 26 day of  
JUNE, 1995.

My Commission expires August 5, 1997



  
\_\_\_\_\_  
NOTARY PUBLIC

DULY ELECTED MEMBERS OF COUNCIL:

- Mary McCallister
- Terry Jay Lewis
- Joe A. Pugh
- Frederick A. Fogleman
- Carroll T. Lay
- David M. Hughes
- Donna Mazzei

CITY OF SUMMERSVILLE  
400 NORTH BROAD STREET  
P.O. BOX 525  
SUMMERSVILLE, WEST VIRGINIA 26651

JOHN STEVEN LEROSE - MAYOR

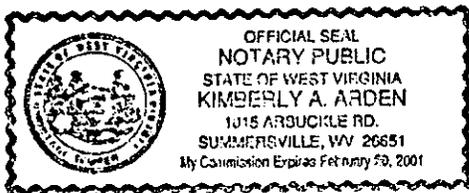
TELEPHONE (304) 872-1211  
TELECOPY (304) 872-2236

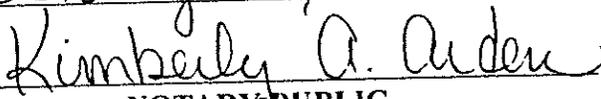
That I, **RON E. HANCOCK**, duly elected Recorder, do solemnly swear that I will uphold the Constitution of the United States, the Constitution of the State of West Virginia and the Municipal Charter of the City of Summersville, and to perform the duties as Recorder for the City of Summersville to the best of my ability, so help me God.

  
\_\_\_\_\_  
RON E. HANCOCK

Taken, subscribed and sworn to me before this 26  
day of JUNE, 1995.

My Commission expires February 20, 2001



  
\_\_\_\_\_  
NOTARY PUBLIC

DULY ELECTED MEMBERS OF COUNCIL:

- Mary McCallister
- Terry Jay Lewis
- Joe A. Pugh
- Frederick A. Fogleman
- Carroll T. Lay
- David M. Hughes
- Donna Mazzei

CITY OF SUMMERSVILLE  
400 NORTH BROAD STREET  
P.O. BOX 525  
SUMMERSVILLE, WEST VIRGINIA 26651

JOHN STEVEN LEROSE - MAYOR

TELEPHONE (304) 872-1211  
TELECOPY (304) 872-2236

THAT WE, MARY MCCALLISTER, TERRY JAY LEWIS, JOE A. PUGH, FREDERICK A. FOGLEMAN, CARROLL T. LAY, DAVID M. HUGHES, and DONNA MAZZEI, duly elected members of Council, do solemnly swear that we will uphold the Constitution of the United States, the Constitution of the State of West Virginia and the Municipal Charter for the City of Summersville, and to perform the duties of members of Council for the City of Summersville to the best of our ability, so help us God.

*Mary McCallister*  
\_\_\_\_\_  
MARY MCCALLISTER

*Terry Jay Lewis*  
\_\_\_\_\_  
TERRY JAY LEWIS

*Joe A. Pugh*  
\_\_\_\_\_  
JOE A. PUGH

*Frederick A. Fogleman*  
\_\_\_\_\_  
FREDERICK A. FOGLEMAN

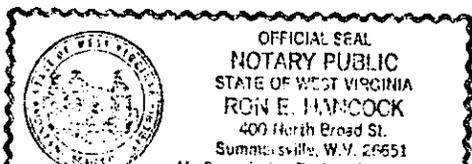
*Carroll T. Lay*  
\_\_\_\_\_  
CARROLL T. LAY

*David M. Hughes*  
\_\_\_\_\_  
DAVID M. HUGHES

*Donna Mazzei*  
\_\_\_\_\_  
DONNA MAZZEI

Taken, subscribed and sworn to before me this 26 day of  
JUNE, 1995.

My Commission expires August 5, 1997



*Ron E. Hancock*  
\_\_\_\_\_  
NOTARY PUBLIC

\$639,000  
THE CITY OF SUMMERSVILLE, WEST VIRGINIA  
WATER AND SEWER SYSTEM REVENUE BONDS  
(WEST VIRGINIA INFRASTRUCTURE AND JOB DEVELOPMENT COUNCIL)  
SERIES 1998 A

DIRECTION TO AUTHENTICATE AND DELIVER BONDS

One Valley Bank, National Association  
Charleston, West Virginia 25301

Lady & Gentlemen:

We herewith hand to you Bond No. AR-1, constituting the entire original issue of The City of Summersville, West Virginia Water and Sewer System Revenue Bonds (West Virginia Infrastructure and Job Development Council), Series 1998 A, dated January 6, 1998, (the "Bonds") executed by the Mayor and Recorder of The City of Summersville (the "Issuer") and bearing the official seal of the Issuer. The Bonds are authorized to be issued under and pursuant to an Ordinance passed by the Issuer on August 11, 1997, and a Supplemental Resolution adopted by the Issuer on January 2, 1998 (the "Ordinance").

You are hereby requested and authorized, pursuant to the Ordinance, to authenticate, register and deliver the Bonds in the name of the West Virginia Water Development Authority, as Original Purchaser thereof.

Dated this 6<sup>th</sup> day of January, 1998.

THE CITY OF SUMMERSVILLE

By \_\_\_\_\_

  
\_\_\_\_\_  
Mayor

CERTIFICATE OF CONSULTING ENGINEER

THE CITY OF SUMMERSVILLE

WATER AND SEWER SYSTEM REVENUE BONDS  
(WEST VIRGINIA INFRASTRUCTURE AND JOB DEVELOPMENT COUNCIL)  
SERIES 1998 A

I, Edward L. Shutt, Registered Professional Engineer, West Virginia License No. 7314, of Stafford Consultants, Inc., Consulting Engineers, Princeton, West Virginia, hereby certify that my firm is the engineer for the acquisition and construction of certain additions, betterments and improvements to the existing water system of the City of Summersville, (the "Issuer") to be constructed in Nicholas County, West Virginia, which construction and acquisition are being financed, in part, by the above-captioned bonds (the "Bonds") of the Issuer. Capitalized words not defined herein shall have the meanings set forth in the Ordinance enacted by the Council of the Issuer on August 11, 1997, effective August 15, 1997, and the Loan Agreement by and between the Issuer and the West Virginia Water Development Authority (the "Authority"), acting on behalf of the West Virginia Infrastructure and Job Development Council, dated January 6, 1998.

1. The Bonds are being issued for the purpose of providing funds to pay the costs of certain extensions, improvements and betterments to the water portion of the City's combined water and sewer system, and paying the costs of issuance thereof, which extensions, improvements and betterments consist of constructing approximately 4,700 lineal feet of 16" waterline, 24,200 lineal feet of 8" waterline, 9,100 lineal feet of 6" waterline and 4,100 lineal feet of 2" waterline, together with valves, hydrants, air releases, service lines, meter settings and all appurtenant facilities (the "Project").

2. The undersigned hereby certifies that (i) the Project will be constructed in accordance with the approved plans, specifications and designs prepared by my firm and as described in application submitted to the Authority requesting the Authority to purchase the Bonds (the "Application") and approved by all necessary governmental bodies, (ii) the Project is adequate for the purpose for which it was designed and has an estimated useful life of at least forty years, (iii) the Issuer has received bids for the construction of the Project which are in an amount and otherwise compatible with the plan of financing described in the Application, (iv) to the best of my knowledge, the Issuer has obtained all permits required by the laws of the State of West Virginia and the federal government necessary for the construction of the Project, (v) the net proceeds of the Bonds, together with all other moneys on deposit or to be deposited simultaneously and irrevocably pledged thereto, are sufficient to pay the costs of construction of the Project as set forth in the Application, and (vi) attached hereto as Exhibit A is the final amended "Schedule B - Total Cost of Project and Sources of Funds" for the Project.

Witness my signature on this 6<sup>th</sup> day of January, 1998.

STAFFORD CONSULTANT'S , INC.

(SEAL)

By   
Edward L. Shutt, R.P.E.  
West Virginia License No. 7314

**WEST VIRGINIA INFRASTRUCTURE AND JOBS DEVELOPMENT COUNCIL**

**SCHEDULE B**

City of Summersville

Glade Creek Water Extension Project 96W-201

**FINAL TOTAL COST OF PROJECT, SOURCES OF FUNDS AND COST OF FINANCING**

A. Cost of Project	Total	SCBG	IJDC Loan	IJDC Grant
1. Construction (Based on Actual Bids)	1,145,060.00	168,649.00	479,844.98	496,566.02
2. Technical Services <i>157,514.37</i>	<del>130,300.00</del> <i>157,514.37</i>	<del>33,333.33</del> <i>33,333.33</i>	<del>106,249.00</del> <i>106,249.00</i>	-0-
3. Legal & Fiscal	<del>24,500.00</del> <i>19,500.00</i>	<del>15,456.28</del> <i>15,456.28</i>	14,043.72	-0-
4. Administrative	25,000.00	20,000.00	5,000.00	-0-
5. Sites and Other Lands	<del>30,000.00</del> <i>30,000.00</i>	<del>1,643.72</del> <i>1,643.72</i>	8,862.30	9,493.98
6. Step I or II or Other Loan Repayment	70,000.00	70,000.00	-0-	-0-
7. Interim Financing Costs	10,000.00	--	10,000.00	--
8. Contingency	<del>87,366.00</del> <i>87,366.00</i>	-0-	-0-	-87,366.00
9. Total of Lines 1 through 8	1,546,366.00	329,000.00	624,000.00	593,366.00
<b>B. Sources of Funds</b>				
10. Federal Grants:				
a.				
b.				
11. State Grants				
a. Small Cities Block Grant	329,000.00	329,000.00		
b.				
12. Other Grants:				
13. Any Other Source: <sup>1</sup>				
a.				
b.				
14. Infrastructure Fund Grant	593,366.00			593,366.00
15. Total of Lines 10 through 14	922,366.00			
16. Net Proceeds Required from Bond Issue				
<b>C. Cost of Financing</b>				
17. Funded Reserve Account <sup>2</sup>				
18. Other Costs <sup>3</sup>				
a. Bond Counsel	15,000.00		15,000.00	
b.				
19. Total Cost of Financing (Lines 17 and 18)	15,000.00			
20. Size of Bond Issue (Line 16 plus Line 19)	639,000.00		639,000.00	

*168,574.67*

*106,249*

*996,690.3*

*87,231.67*

*[Signature]*  
 GOVERNMENTAL AGENCY

*[Signature]*  
 CONSULTING ENGINEER

DATE: *January 2, 1998*

DATE: *1-5-98*

<sup>1</sup> Include the proceeds of any parity or subordinate bond issue to be used for such purpose and attach supporting documentation.

<sup>2</sup> Consult with bond counsel and the Council before assuming a funded reserve.

<sup>3</sup> For example, fees of accountants, bond counsel and local counsel for the Governmental Agency.



**STAFFORD  
CONSULTANTS  
INCORPORATED**

*Engineering. Design, and Consulting*

January 9, 1998

File: 95-6312.15/B

The Honorable Steven LeRose  
Mayor - City of Summersville  
400 North Broad Street  
P.O. Box 525  
Summersville, West Virginia 26651

Dear Mayor LeRose:

RE: City of Summersville  
Glade Creek Phase I - Revised Schedule B  
and Expenditures Progress Schedule

Enclosed is a revised Schedule B for your signature. Also enclosed is a revised Expenditure Progress Schedule. Please mail these to Susan Riggs immediately.

If you have any questions, please let me know.

Sincerely,

Edward L. Shutt, P.E.  
Vice President

ELS/cld

Enclosures

c: Ron Hancock, w/enclosure  
Kim Arden, w/enclosure  
Jim Withrow, w/enclosure  
W.D. Smith, w/enclosure  
Susan Riggs

# WEST VIRGINIA INFRASTRUCTURE AND JOBS DEVELOPMENT COUNCIL

SCHEDULE B - Revised January 7, 1998

City of Summersville

Glade Creek Water Extension Project 96W-201

## FINAL TOTAL COST OF PROJECT, SOURCES OF FUNDS AND COST OF FINANCING

A. Cost of Project	Total	SCBG	IJDC Loan	IJDC Grant
1. Construction (Based on Actual Bids)	1,145,060.00	168,649.00	479,844.98	496,566.02
2. Technical Services	159,574.33	53,325.33	106,249.00	-0-
3. Legal & Fiscal	29,500.00	15,456.28	14,043.72	-0-
4. Administrative	24,925.67	19,925.67	5,000.00	-0-
5. Sites and Other Lands	20,000.00	1,643.72	8,862.30	9,493.98
6. Step I or II or Other Loan Repayment	70,000.00	70,000.00	-0-	-0-
7. Interim Financing Costs	10,000.00	--	10,000.00	--
8. Contingency	87,306.00	-0-	-0-	87,306.00
9. Total of Lines 1 through 8	1,546,366.00	329,000.00	624,000.00	593,366.00
<b>B. Sources of Funds</b>				
10. Federal Grants:				
a.				
b.				
11. State Grants				
a. Small Cities Block Grant	329,000.00	329,000.00		
b.				
12. Other Grants:				
13. Any Other Source: <sup>1</sup>				
a.				
b.				
14. Infrastructure Fund Grant	593,366.00			593,366.00
15. Total of Lines 10 through 14	922,366.00			
16. Net Proceeds Required from Bond Issue				
<b>C. Cost of Financing</b>				
17. Funded Reserve Account <sup>2</sup>				
18. Other Costs <sup>3</sup>				
a. Bond Counsel	15,000.00		15,000.00	
b.				
19. Total Cost of Financing (Lines 17 and 18)	15,000.00			
20. Size of Bond Issue (Line 16 plus Line 19)	639,000.00		639,000.00	

GOVERNMENTAL AGENCY \_\_\_\_\_

DATE: \_\_\_\_\_

*Edward A. Hunt*  
CONSULTING ENGINEER

DATE: 1-8-98

<sup>1</sup> Include the proceeds of any parity or subordinate bond issue to be used for such purpose and attach supporting documentation.

<sup>2</sup> Consult with bond counsel and the Council before assuming a funded reserve.

<sup>3</sup> Consult with bond counsel and the Council before assuming a funded reserve.

<b>WEST VIRGINIA INFRASTRUCTURE AND JOBS DEVELOPMENT COUNCIL</b>				
<b>City of Summersville 96W-201</b>				
<b>Glade Creek Water Line Extension Project</b>				
<b>Requisition No. 1</b>				
<b>Small Cities Block Grant of \$329,000</b>				
<b>EXPENDITURES PROGRESS</b>				
	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>
	<b>As Per Schedule B</b>	<b>Paid Prior To This Draw</b>	<b>As Part of This Draw</b>	<b>Paid to Date (Column 2+3)</b>
A) Construction Costs	168,649.00	--	--	--
B) Technical Services	53,325.33	53,325.33	--	53,325.33
C) Legal and Fiscal	15,456.28	8,738.84	--	8,738.84
D) Administration	19,925.67	--	--	--
E) Sites and Other Lands	1,643.72	--	--	--
F) Other Costs	70,000.00	--	--	--
G) Bond Counsel	--	--	--	--
H) Contingency	--	--	--	--
I) Totals	329,000.00	62,064.17	--	62,064.17
<b>Infrastructure Fund of \$1,232,366</b>				
<b>EXPENDITURES PROGRESS</b>				
	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>
	<b>As Per Schedule B</b>	<b>Paid Prior To This Draw</b>	<b>As Part of This Draw</b>	<b>Paid to Date (Column 2+3)</b>
A) Construction Costs	976,411.00	--	--	--
B) Technical Services	106,249.00	--	12,373.82	12,373.82
C) Legal and Fiscal	14,043.72	--	14,043.72	14,043.72
D) Administration	5,000.00	--	--	--
E) Sites and Other Lands	18,356.28	--	8,862.30	8,862.30
F) Other Costs	10,000.00	--	--	--
G) Bond Counsel	15,000.00	--	15,000.00	15,000.00
H) Contingency	87,306.00	--	--	--
I) Totals	1,232,366.00	--	50,279.84	50,279.84

Date 1-7-98

\$639,000  
THE CITY OF SUMMERSVILLE, WEST VIRGINIA  
WATER AND SEWER SYSTEM REVENUE BONDS  
(WEST VIRGINIA INFRASTRUCTURE AND JOB DEVELOPMENT COUNCIL)  
SERIES 1998 A

REGISTRAR'S AGREEMENT

THIS REGISTRAR'S AGREEMENT, dated as of the 6<sup>th</sup> day of January, 1998, by and between THE CITY OF SUMMERSVILLE, a municipal corporation and a political subdivision of the State of West Virginia (the "Issuer"), and ONE VALLEY BANK, NATIONAL ASSOCIATION, a national banking association, as bond registrar and authenticating agent (the "Registrar").

WHEREAS, the Issuer has contemporaneously with the execution hereof issued and sold the bonds described above (the "Bonds"); and

WHEREAS, capitalized words and terms used in this Registrar's Agreement and not otherwise defined herein shall have the respective meanings given them in the Ordinance enacted by the Issuer on August 11, 1997, effective August 25, 1997, and a supplemental resolution adopted by the Issuer on January 2, 1998, authorizing issuance of the Bonds (collectively herein the "Ordinance"), copies of which are respectively attached as Exhibits A and B hereto and incorporated herein by reference; and

WHEREAS, the Ordinance appoints One Valley Bank, National Association to act as Registrar for the Bonds;

NOW, THEREFORE, it is agreed by and between the parties hereto as follows:

1. Upon the execution of this Registrar's Agreement by the Issuer and the Registrar and during the term hereof, the Registrar does accept and shall have and carry out the powers and duties of Registrar for the Bonds, all as set forth in the Ordinance, such duties including, among other things, the duties to authenticate, register and deliver Bonds upon original issuance and when properly presented for exchange or transfer, and shall do so with the intention of maintaining the exclusion of interest on the Bonds from gross income for federal income tax purposes, in accordance with any rules and regulations promulgated by the United States Treasury Department or by the Municipal Securities Rulemaking Board or similar regulatory bodies as the Issuer advises it of and with generally accepted industry standards.

2. The Registrar agrees to furnish the Issuer with appropriate records of all transactions carried out by it as Registrar and to furnish the Issuer with the names and specimen signatures of the Registrar's authorized officers for the purposes of acting as the Registrar and with such other information and reports as the Issuer may from time to time reasonably require.

3. The Registrar shall have no responsibility or liability for any action taken by it at the specific direction of the Issuer.

4. As compensation for acting as Registrar pursuant to this Registrar's Agreement, the Issuer hereby agrees to pay to the Registrar, from time to time the compensation for services rendered hereunder provided in the annexed schedule and reimbursement for reasonable expenses incurred in connection therewith.

5. It is intended that this Registrar's Agreement shall carry out and implement provisions of the Ordinance with respect to the Registrar. In the event of any conflict between the terms of this Registrar's Agreement and the Ordinance, the terms of the Ordinance shall govern.

6. The Issuer and the Registrar each warrants and represents that it is duly authorized and empowered to execute and enter into this Registrar's Agreement and that neither such execution nor the performance of its duties hereunder or under the Ordinance will violate any order, decree or agreement to which it is a party or by which it is bound.

7. The Registrar may resign as Registrar at any time by giving at least 60 days written notice to the Issuer. The Registrar may be removed as Registrar at any time by an instrument filed with the Registrar and signed by the Issuer.

Notices shall be delivered to the parties at the following addresses:

ISSUER:

The City of Summersville  
400 North Broad Street  
Summersville, West Virginia 26651  
Attention: Mayor

REGISTRAR

One Valley Bank, National Association  
P. O. Box 1793  
Charleston, West Virginia 25326  
Attention: Corporate Trust Department

8. Unless otherwise so notified, the Registrar shall register all Bonds in the name of the West Virginia Water Development Authority.

9. All notices and communications required or permitted hereunder, except as otherwise expressly agreed in writing, shall be in writing and shall be delivered by hand or sent by mail or sent by telex, telecopier, or telegraph, addressed to the respective party at the appropriate address in Section 7 hereof.

10. The Registrar shall maintain records which indicate the date and volume of services rendered hereunder. Such records shall include, but not be limited to, records of the Bonds or portions thereof paid by the Registrar. Such records and the applicable premises of the Registrar shall be subject to inspection by duly designated agents, designees or officials of the Issuer for the purpose of reviewing the adequacy of procedures, systems capabilities methods of operation. Any such inspection may be made during normal banking hours after reasonable prior written notice.

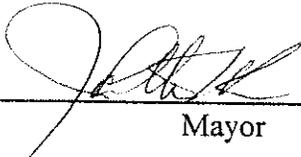
11. The Registrar warrants and represents that it is a national banking association, and in good standing under the laws of the United States of America, may lawfully conduct business in the State of West Virginia, and is lawfully empowered, pursuant to such laws, to accept the duties and obligations contemplated and as provided in this agreement and to serve in the capacity of Registrar thereunder.

12. There is no litigation pending or threatened in any court, either State or Federal, calling into question the creation, organization or existence of the Registrar or the authority of the Registrar to perform its duties under this agreement or the Ordinance.

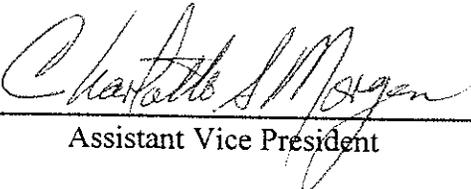
13. This Registrar's Agreement shall be governed by and construed in accordance with the laws of the State of West Virginia.

IN WITNESS WHEREOF, THE CITY OF SUMMERSVILLE and ONE VALLEY BANK, NATIONAL ASSOCIATION, have each caused this Registrar's Agreement to be executed in their names and on their behalf, by their duly authorized officers, all as of the date first above written.

THE CITY OF SUMMERSVILLE

By  \_\_\_\_\_  
Mayor

ONE VALLEY BANK, NATIONAL ASSOCIATION

By  \_\_\_\_\_  
Assistant Vice President

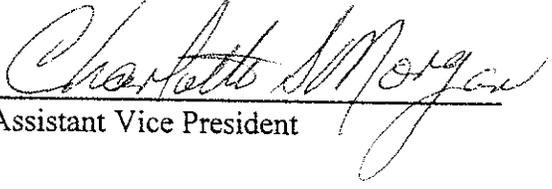
\$639,000  
THE CITY OF SUMMERSVILLE, WEST VIRGINIA  
WATER AND SEWER SYSTEM REVENUE BONDS  
(WEST VIRGINIA INFRASTRUCTURE AND JOB DEVELOPMENT COUNCIL)  
SERIES 1998 A

CERTIFICATE OF REGISTRATION OF BONDS

I, Charlotte S. Morgan, Assistant Vice President, of One Valley Bank, National Association, of Charleston, West Virginia, as Registrar (the "Registrar") under the Ordinance providing for the issuance of the Bonds described above, hereby certify that on the 6<sup>th</sup> day of January, 1998, the fully registered Water and Sewer System Revenue Bonds (West Virginia Infrastructure and Job Development Council), Series 1998 A in the stated principal amount of \$639,000, designated "The City of Summersville, Water and Sewer System Revenue Bonds (West Virginia Infrastructure and Job Development Council), Series 1998 A" numbered AR-1, and dated the date hereof were registered as to principal and interest in the name of "West Virginia Water Development Authority" in the books of the Issuer kept for that purpose at our office, by a duly authorized officer on behalf of One Valley Bank, National Association, Charleston, West Virginia, as Registrar.

WITNESS my signature as of this 6<sup>th</sup> day of January, 1998.

ONE VALLEY BANK, NATIONAL  
ASSOCIATION

By   
Its Assistant Vice President

\$639,000  
THE CITY OF SUMMERSVILLE, WEST VIRGINIA  
WATER AND SEWER SYSTEM REVENUE BONDS  
SERIES 1998 A

REGISTRAR'S CERTIFICATE

The undersigned, on behalf of ONE VALLEY BANK, NATIONAL ASSOCIATION, Charleston, West Virginia, a national banking association (the "Bank"), hereby certifies as follows with respect to the above-captioned Bonds (the "Bonds"):

1. The Bank has full power and authority to enter into and carry out the provisions of the Registrar's Agreement, dated as of January 6, 1998, between The City of Summersville (the "Issuer") and the Bank (the "Agreement").

2. The person whose title, name and signature is set forth below holds the position by election or appointment by the Board of Directors of the Bank shown opposite her name, and such person has been respectively named and designated as an authorized officer of the Bank to authenticate and register the Bonds, to deliver certificates on behalf of the Bank in connection with the closing of the sale of the Bonds and to take any other actions required by the Agreement.

Assistant Vice President      Charlotte S. Morgan



3. The above signed, Charlotte S. Morgan, was duly authorized to, and did on or prior to the date hereof, execute and deliver the Agreement to the Issuer on behalf of the Bank.

4. The Bank has received from the Issuer on the date hereof the Bonds, being one certificate, namely No. AR-1, in the principal amount of \$639,000, payable as to principal only, and maturing all as set forth therein. At the time of such receipt, the Bond had been executed by the manual signature of the Mayor of the City, impressed with the seal of the City, and attested by the manual signature of the City Recorder.

5. The Bank has caused the Series 1998 A Bonds to be duly authenticated by the manual signature of Charlotte Morgan, by attaching to such Bonds a certificate in the following terms:

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of The City of Summersville Water and Sewer System Revenue Bonds, Series 1998 A, described in the within mentioned Ordinance and has been duly registered in the name of the Registered Owner set forth above on the date set forth below.

Date: January 6, 1998

ONE VALLEY BANK, NATIONAL  
ASSOCIATION, as Registrar

By: /s/  
Its Authorized Officer

WITNESS my signature this 6<sup>th</sup> day of January, 1998.

ONE VALLEY BANK, NATIONAL  
ASSOCIATION

By   
Its 

VAUGHAN & WITHROW  
*Attorneys and Counsellors at Law*

DENNIS R. VAUGHAN, JR.  
JAMES W. WITHROW

SUITE 200 CAPITOL CENTRE  
232 CAPITOL STREET  
CHARLESTON, WEST VIRGINIA 25301

TELEPHONE (304) 342-3900  
TELECOPY (304) 344-2386

January 6, 1998

West Virginia Water Development Authority  
180 Association Drive  
Charleston, WV 25311

The City of Summersville  
400 North Broad Street  
Summersville, WV 26651

Re: The City of Summersville, Water and Sewer System Revenue Bonds (West Virginia Infrastructure and Job Development Council), Series 1998 A

Ladies and Gentlemen:

We are Bond Counsel to The City of Summersville (the "City"), a municipal corporation created under the laws of the State of West Virginia.

We have examined a certified copy of proceedings and other papers relating to (i) the authorization of a loan agreement dated January 6, 1998 (the "Loan Agreement"), between the City and the West Virginia Water Development Authority (the "Authority") acting on behalf of the West Virginia Infrastructure and Job Development Council (the "Council") and (ii) the issuance of a series of revenue bonds of the City, denoted as Water and Sewer System Revenue Bonds (West Virginia Infrastructure and Job Development Council), Series 1998 A, dated January 6, 1998 (the "Series 1998 A Bonds"), issued pursuant to an Ordinance enacted by the Council of the City on August 11, 1997, effective on August 25, 1997, as amended and supplemented by a Supplemental Resolution adopted on January 2, 1998 (the "Ordinance").

The Series 1998 A Bonds are in the aggregate principal amount of \$639,000, issued in the form of one bond, registered in the name of the West Virginia Water Development Authority, as to principal only, payable September 1, December 1, March 1 and June 1 of each year, beginning March 1, 1999, all as set forth in the Series 1998 A Bonds. The Series 1998 A Bonds are subject to redemption prior to maturity to the extent, at the time, under the conditions and subject to the limitations set forth in the Ordinance and the Loan Agreement.

The Series 1998 A Bonds are issued for the purpose of providing funds to pay the costs of the acquisition and construction of certain extensions, improvements and betterments to the water portion of the combined waterworks and sewer system (the "System") for the City and paying the costs of issuance thereof.

We have also examined the applicable provisions of Chapter 8, Article 20 of the Code of West Virginia, 1931, as amended (the "Act"), under which the Series 1998 A Bonds are issued.

Based upon the foregoing and upon our examination of such other documents as we have deemed necessary, we are of the opinion as follows:

1. The Loan Agreement has been duly authorized by and executed on behalf of the City and is a valid and binding special obligation of the City enforceable in accordance with its terms.
2. The Loan Agreement inures to the benefit of the Authority and the Council and cannot be amended so as to adversely affect the rights of the Authority or the Council or diminish the obligations of the City without the consent of the Authority and the Council.
3. The City is a duly organized and presently existing municipal corporation, with full power and authority to operate and maintain the System referred to in the Ordinance and the Loan Agreement, to acquire and construct the Project and to issue and sell the Series 1998 A Bonds, all under the Ordinance, the Act and other applicable provisions of law.
4. The City has legally and effectively enacted the Ordinance and all other necessary actions and certifications in connection with the issuance and sale of the Series 1998 A Bonds. The Ordinance contains provisions and covenants substantially in the form of those set forth in Section 4.1 of the Loan Agreement.
5. The Series 1998 A Bonds are valid and legally enforceable special obligations of the City, payable from the net revenues of the System referred to in the Ordinance and secured by a first lien on and pledge of the net revenues of said System, which first lien is shared with the City's 1967 Water and Sewer Note, Series 1990 A Bonds and Series 1991 A Bonds, all in accordance with the terms of the Series 1998 A Bonds and the Act and have been duly issued and delivered to the Authority.

West Virginia Water Development Authority  
The City of Summersville  
January 6, 1998  
Page 3

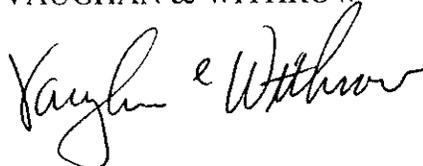
6. The City has reserved the right to issue additional bonds ranking on a parity with the Series 1998 A Bonds, as provided in the Ordinance.

The rights of the owners of the Series 1998 A Bonds and the enforceability of the Series 1998 A Bonds and the Ordinance may be subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors rights heretofore or hereafter enacted to the extent constitutionally applicable, and that their enforcement may also be subject to the exercise of judicial discretion in appropriate cases.

We have examined the executed and authenticated Series 1998 A Bond numbered AR-1, and in our opinion, the form of said Bond and its execution and authentication are regular and proper.

Very truly yours,

VAUGHAN & WITHROW

A handwritten signature in cursive script, appearing to read "Vaughan & Withrow", written in black ink.

LAW OFFICE  
**GREGORY A. TUCKER**  
719 MAIN STREET  
P.O. BOX 524  
SUMMERSVILLE, WEST VIRGINIA 26651

TELEPHONE: (304) 872-2500

FAX: (304) 872-1188

January 6, 1998

West Virginia Water Development Authority  
180 Association Drive  
Charleston, WV 25311

Re: \$639,000 The City of Summersville,  
Water and Sewer System Revenue Bonds  
(West Virginia Infrastructure and  
Job Development Council), Series 1998 A

Ladies and Gentlemen:

I am City Attorney for The City of Summersville, West Virginia (the "City"), in connection with the issuance of the City's \$639,000 in aggregate principal amount Water and Sewer System Revenue Bonds, Series 1998 A (the "Bonds").

I have reviewed copies of the approving opinion of Vaughan & Withrow, as bond counsel, the Loan Agreement by and among, the West Virginia Water Development Authority (the "Authority"), the West Virginia Infrastructure and Job Development Council and the City dated January 6, 1998, and the Ordinance enacted by the City Council on August 11, 1997, as amended and supplemented by a Supplemental Resolution adopted January 2, 1998, relating to the Bonds. All capitalized terms used herein and not otherwise defined herein shall have the meanings set forth in the Ordinance.

I am of the opinion that:

1. The Loan Agreement has been duly authorized, executed and delivered by the City and, assuming due authorization, execution and delivery by the other parties thereto, constitutes a valid and binding agreement of the City in accordance with its terms.

2. The members of the Council are the duly and properly elected or appointed members and are thereby authorized to act on behalf of the City.

3. The Ordinance has been duly enacted by the Council of the City, is in full force and effect and no further action of the City is required for its continued validity.

4. The execution and delivery of the Bonds and the Loan Agreement

and the consummation of the transactions contemplated by the Loan Agreement and the Ordinance, and the carrying out of the terms thereof, do not and will not in any material respect conflict with or constitute on the City's part a breach of or default under any agreement or other instrument to which the City is a party or any existing law, regulation, court order or consent decree to which the City is subject.

5. The City received all permits, licenses, approvals and authorizations necessary for the issuance of the Bonds, the acquisition and construction of the Project, the operation of the System and the imposition of rates and charges, including, without limitation, approval from the West Virginia Infrastructure and Jobs Development Council, and the receipt of all requisite orders and approvals from the Public Service Commission of West Virginia, and has taken any other action required for the imposition of such rates and charges, including, without limitation, the enactment of an ordinance prescribing such rates and charges, and the appeal period from orders, if any has expired. The Public Service Commission of West Virginia has issued a certificate of convenience and necessity approving the issuance of the Bonds and the acquisition and construction of the Project, and no party, except the City has any right to appeal such order, and the City does intend to appeal such order.

6. To the best of my knowledge after due inquiry, there is no action, suit, proceeding or investigation at law or in equity before or by any court, public board or body, pending or, to my knowledge, threatened against or affecting the City (or, to my knowledge, any basis therefor) wherein an unfavorable decision, ruling or finding would adversely affect the transactions contemplated by the Loan Agreement or the Ordinance or the validity of or security for the Bonds.

7. The City has acquired all easements and other property rights necessary for the construction of the Project.

All counsel to this transaction may rely upon the foregoing opinion as if specifically addressed to them.

Respectfully,



Gregory A. Tucker

GAT:sr

LAW OFFICE  
**GREGORY A. TUCKER**  
719 MAIN STREET  
P.O. BOX 524  
SUMMERSVILLE, WEST VIRGINIA 26651

TELEPHONE: (304) 872-2500

FAX: (304) 872-1188

January 6, 1998

West Virginia Infrastructure Fund  
1320 One Valley Square  
Charleston, WV 25301

Re: City of Summersville Glade Creek  
water extension project  
Case No. 97-0704-W-CN

**OPINION OF COUNSEL  
RELATIVE TO RIGHTS-OF-WAY**

I have reviewed the action taken by the City of Summersville, a municipal corporation, (hereinafter called the "Corporation") in obtaining the rights-of-way for the construction, operation and maintenance of the facilities to be installed, repaired or enlarged with the proceeds of a loan made or insured by, and/or a grant from the West Virginia Infrastructure Fund to the Corporation. I have examined the right-of-way instrument, permits or licenses obtained from landowners, public bodies and public utilities and made such searches of the public records necessary to determine legal sufficiency of the instruments covered by the "Right-of-Way Certificate," executed by the Corporation on January 5, 1998. I also have examined the "Right-of-Way Map" to determine whether continuous and adequate land and right-of-way are owned or have been acquired by the instrument covered in the "Right-of-Way Certificate".

Based on the foregoing examination, and to the best of my knowledge, information and belief, I am of the opinion that:

A. The legal instrument by which the Corporation has acquired said right-of-way (a) are in appropriate and due legal form and adequately confer upon the Corporation the necessary rights-of-way for the construction, operation and maintenance of its facilities in their present or proposed location, and such omissions or defects as may exist will in no substantial way or manner endanger the value or operation of the facilities, and (b) will be properly recorded in the appropriate public land records of each County in which any of the land affected thereby is situated. Such consents, releases or subordinations from lienholders recommended by me or required by the Corporations Consulting Engineer have been obtained.

B. The legal instrument referred to above give unto the Corporation a continuous and adequate right-of-way to permit the construction, operation and maintenance of the Corporation's facilities except as below noted.

C. Exceptions:

a. Defects exist, at this time in regard to the following:

1. Defect in a deed from Laura Sparks, et al, to Anna Mae Riddle dated August 24, 1976, and recorded in the office of the Clerk of the County Commission of Nicholas County, West Virginia, in Deed Book 266 at page 656. A corrective deed is being prepared and executed to cure this defect. However, should this deed not be executed prior to construction, the City will pursue condemnation to acquire legal access to the property.
2. Several rights of way are subject to the contingent remainder interests of the children of Paris Morris, Sr. "living at the time of his death. Mr. Morris is still living and his known children have all signed deeds conveying their interests. However, under the "Fertile Octogenarian Rule", should there be other children, either by birth or adoption, they would have contingent interest should they survive him. Further, should one of Paris Morris, Sr.'s known children predecease him, that child's interest may vest in the children of any predeceasing child of Paris Morris, Sr.
3. The City has yet to receive the executed right of way agreement of H. R. Deitz., et al.. This agreement has been executed by some of those owning an interest in the property and will be signed by the remaining owners and recorded prior to construction. The City will pursue condemnation to acquire legal access to the property should this not occur.

Respectfully,



Gregory A. Tucker

## RIGHT-OF-WAY CERTIFICATE

The undersigned, City of Summersville, hereby certifies except as noted in item 4 below:

1. That the undersigned has acquired and presently holds continuous and adequate rights-of-way on private lands needed for the construction, operation and maintenance of the facilities to be installed, repaired or enlarged with the proceeds of a loan made or insured by, and/or a grant from the West Virginia Infrastructure Fund and such omissions, defects or restrictions as may exist will in no substantial way or manner endanger the value of the operation of the facilities.

2. That the undersigned has acquired the necessary permits, franchises and authorizations or other instruments by whatever name designate, from public utilities and public bodies, commissioners or agencies authorizing the construction, operation and maintenance of the facilities upon, along or across streets, roads, highways and public utilities.

3. That the "Right-of-Way Map" shows the location and description of all land and rights-of-way or easement deeds, permits or other instruments.

4. Exceptions:

- a. Defect in a deed from Laura Sparks, et al, to Anna Mae Riddle dated August 24, 1976, and recorded in the office of the Clerk of the County Commission of Nicholas County, West Virginia, in Deed Book 266 at page 656. A corrective deed is being prepared and executed to cure this defect. However, should this deed not be executed prior to construction, the City will pursue condemnation to acquire legal access to the property.
- b. Several rights of way are subject to the contingent remainder interests of the children of Paris Morris, Sr. "living at the time of his death. Mr. Morris is still living and his known children have all signed deeds conveying their interests. However, under the "Fertile Octogenarian Rule", should there be other children, either by birth or adoption, they would have contingent interest should they survive him. Further, should one of Paris Morris, Sr.'s known children predecease him, that child's interest may vest in the children of any predeceasing child of Paris Morris, Sr.
- c. The City has yet to receive the executed right of way agreement of H. R. Deitz., et al.. This agreement has been executed by some of those owning an interest in the property and will be signed by the remaining owners and recorded prior to construction. The City will pursue condemnation to acquire legal access to the property should this not occur.

WITNESS WHEREOF, Applicant hereunto affixes its name and corporate seal  
this 5th day of January, 1998.

CITY OF SUMMERSVILLE  
a municipal corporation

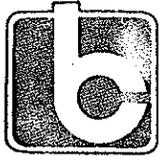
BY: [Signature]

ITS: Mayor

Attest:

[Signature]  
Recorder

(Affix corporate seal here)



# Blair & Company

CERTIFIED PUBLIC ACCOUNTANTS

721 Peoples Building  
Post Office Box 1991  
Charleston, West Virginia 25327  
(304) 848-4608

John D. Blair, Jr., CPA

January 6, 1998

The City of Summersville  
400 North Broad Street  
Summersville, West Virginia 26651

West Virginia Water Development Authority  
180 Association Drive  
Charleston, West Virginia 25311

**Re: The City of Summersville, Water and Sewer System Revenue Bonds  
(West Virginia Infrastructure and Job Development Council), Series 1998 A**

Ladies and Gentlemen:

We have been asked to determine if the combined Water and Sewer System of The City of Summersville ("System") will achieve sufficient revenue coverage of its existing and proposed debt service as set forth in the Loan Agreement dated January 6, 1998, by and between the City and the West Virginia Water Development Authority acting on behalf of the West Virginia Infrastructure and Job Development Council, and whether such revenues meet the requirements for the issuance of parity bonds set forth in the loan agreements relating to the City's Series 1990 A Bonds, Series 1990 B Bonds, Series 1991 A Bonds and Series 1991 B Bonds.

We understand said Loan Agreement and Section 6.09 of the Ordinance passed by the City Council on August 11, 1997, requires the revenues derived from System will always be sufficient to provide revenues in each fiscal year to pay, as same shall become due, the necessary expenses, repairs (including replacement), maintenance and operation of said System ("Net Revenues"), and leave a balance each year equal to at least 115% of the maximum amount required in any year for the payment of the principal of and interest on the Series 1998 A Bonds, and any obligations secured by a lien superior to or on a parity with such bonds, including the City's 1967 Water and Sewer Note, the Series 1990 A Bonds and the Series 1991 A Bonds.

Additionally, we understand Section 4.1(b)(v) of the loan agreements relating to the Series 1990 A Bonds, Series 1990 B Bonds, the Series 1991 A Bonds and Series 1991 B Bonds provide that parity bonds may only be issued if the net revenues of the System prior to the issuance of any parity bonds, plus reasonably projected revenues from rate increases and the improvements to be financed by such parity bonds, shall be not less than 115% of the maximum debt service in any succeeding year on the Series 1990 A Bonds, Series 1990 B Bonds, Series 1991 A Bonds and Series 1991 B Bonds, any parity bonds theretofore and then being issued and any other bonds or obligations payable from or secured by the revenues of the System prior to the Series 1990 A Bonds, Series 1990 B Bonds, Series 1991 A Bonds and the Series 1991 B Bonds.

We further understand the bond ordinances authorizing the issuance of the Series 1990 A Bonds, Series 1990 B Bonds, Series 1991 A Bonds and Series 1991 B Bonds provide that no parity bonds shall be issued unless the Net Revenues actually derived from the System during any 12 consecutive months, within the 18 months immediately preceding the date of the actual issuance of such parity bonds, plus the estimated average increased annual Net Revenues to be received in each of the three (3) succeeding years after the completion of the improvements to be financed by such Parity Bonds, shall not be less than 115% of the largest aggregate amount that will mature and become due in any succeeding fiscal year for principal of and interest on the following:

- (a) the bonds then outstanding;
- (b) any parity bonds theretofore issued pursuant to the provisions contained in said bond ordinances which are then outstanding; and
- (c) the parity bonds then proposed to be issued.

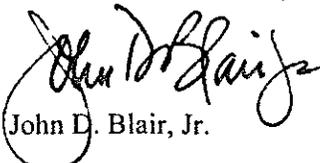
We have issued our reports on the System's Rule 42 Financial Exhibit, dated May 8, 1997, and related Assumptions in Connection with Proposed Financing of System Improvements, dual dated April 23 and May 8, 1997. We have further reviewed the System's Annual Reports to the Public Service Commission of West Virginia for the years ended June 30, 1995, 1996 and 1997, and the current rate structure of the System adopted by Ordinance dated October 15, 1996, said review for the limited purpose of expressing assurance as to the sufficiency of System revenues to meet the requirements for revenue coverage on its existing and proposed debt service.

In calculating the required revenue coverage, we have assumed the proposed bonds will conform to the terms set forth in the Loan Agreement and Ordinance.

Based on the foregoing and the positive representations of the City regarding the City's responsibility for fair presentation of financial information and accounting estimates, the absence of irregularities in the internal control structure, and the completeness of financial records regarding material transactions, it is our opinion that the annual revenues anticipated for The City of Summersville Water and Sewer System will be sufficient to provide revenues in each fiscal year to pay, as the same shall become due, the necessary expenses, repairs, maintenance and operation of said System, and leave a balance each year equal to at least 115% of the maximum amount required in any year for the payment of the principal of and interest on the 1967 Water and Sewer Note, Series 1990 A Bonds, the Series 1991 A Bonds and the Series 1998 A Bonds, and any obligations secured by a lien superior to or on a parity with such bonds, and that the Net Revenues of the System for 12 of the last 18 months prior to the issuance of the Series 1998 A Bonds is not less than 115% of the maximum debt service in any succeeding year on the 1967 Water and Sewer Note, Series 1990 A Bonds, Series 1990 B Bonds, Series 1991 A Bonds, Series 1991 B Bonds and the Series 1998 A Bonds, and meets the parity test requirements for the Series 1990 A Bonds and the Series 1991 A Bonds.

Sincerely,

BLAIR & COMPANY, CPA's

  
John D. Blair, Jr.

UNITED STATES OF AMERICA  
STATE OF WEST VIRGINIA  
THE CITY OF SUMMERSVILLE  
WATER AND SEWER SYSTEM REVENUE BOND  
WEST VIRGINIA INFRASTRUCTURE AND JOB DEVELOPMENT COUNCIL  
SERIES 1998 A

No. AR-1

\$639,000.00

KNOW ALL MEN BY THESE PRESENTS: That THE CITY OF SUMMERSVILLE, a municipal corporation and political subdivision of the State of West Virginia in Nicholas County of said State (the "Issuer"), for value received, hereby promises to pay, solely from the special funds provided therefor, as hereinafter set forth, to the West Virginia Water Development Authority (the "Authority") or registered assigns the sum of Six Hundred Thirty Nine Thousand and 00/100 Dollars (\$639,000.00), or such lesser amount as shall have been advanced to the Issuer hereunder and not previously repaid, as set forth in the "Record of Advances" attached hereto as Exhibit A and incorporated herein by reference, without interest, in installments on March 1, June 1, September 1 and December 1 of each year, beginning March 1, 1999, as set forth on the "Schedule of Annual Debt Service" attached as Exhibit B hereto and incorporated herein by reference with interest on each installment at the rate per annum set forth on said Exhibit B.

Principal installments of this Bond are payable in any coin or currency which, on the respective dates of payment of such installments, is legal tender for the payment of public and private debts under the laws of the United States of America, at the office of the West Virginia Municipal Bond Commission, Charleston, West Virginia (the "Paying Agent"). The interest on this Bond is payable by check or draft of the Paying Agent mailed to the registered owner hereof at the address as it appears on the books of One Valley Bank, National Association, Charleston, West Virginia, as registrar (the "Registrar") on the 15th day of the month next preceding an interest payment date, or by such other method as shall be mutually agreeable so long as the Authority is the Registered Owner hereof.

This Bond may be redeemed prior to its stated date of maturity in whole or in part, but only with the express written consent of the Authority, and upon the terms and conditions prescribed by, and otherwise in compliance with, the Loan Agreement by and between the Issuer and the Authority, acting on behalf of the West Virginia Infrastructure and Job Development Council, dated January 6, 1998.

This Bond is issued (i) to pay a portion of the costs of acquisition and construction of certain additions, improvements and betterments to the water and sewer system facilities of the Issuer (the "Project"); and (ii) to pay certain costs of issuance hereof and related costs. This Bond is issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 8, Article 20 of the West Virginia Code of 1931, as amended (the "Act"), and an Ordinance and Supplemental Resolution, duly

enacted and adopted, respectively, by the Issuer on August 11, 1997, and January \_\_\_\_\_, 1998, (collectively called the "Bond Legislation"), and is subject to all the terms and conditions thereof. The Bond Legislation provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for the Bonds under the Bond Legislation.

THIS BOND IS ISSUED ON A PARITY WITH THE 1967 WATER AND SEWER SYSTEM NOTE OF THE ISSUER (THE "1967 WATER AND SEWER NOTE"), ISSUED IN THE AGGREGATE PRINCIPAL AMOUNT OF \$58,250, THE WATER AND SEWER SYSTEM REVENUE BONDS SERIES 1990 A (THE "SERIES 1990 A BONDS") ISSUED IN THE AGGREGATE PRINCIPAL AMOUNT OF \$281,843.00 AND THE WATER AND SEWER SYSTEM REVENUE BONDS SERIES 1991 A (THE "SERIES 1991 A BONDS") ISSUED IN THE AGGREGATE PRINCIPAL AMOUNT OF \$790,057, WITH RESPECT TO LIENS AND SOURCES OF AND SECURITY FOR PAYMENT OF THE SERIES 1997 A BONDS.

This Bond is payable only from and secured by a shared first lien pledge of the Net Revenues (as defined in the Bond Legislation) to be derived from the operation of the System, moneys in the Reserve Account created under the Bond Legislation for the Bonds (the "Series 1998 A Bonds Reserve Account"), and unexpended proceeds of the Bonds. Such Net Revenues shall be sufficient to pay the principal of and interest on all bonds which may be issued pursuant to the Act and which shall be set aside as a special fund hereby pledged for such purpose. This Bond does not constitute a corporate indebtedness of the Issuer within the meaning of any constitutional or statutory provisions or limitations, nor shall the Issuer be obligated to pay the same or the interest hereon except from said special fund provided from the Net Revenues, the moneys in the Series 1998 A Bonds Reserve Account and unexpended Bond proceeds. Pursuant to the Bond Legislation, the Issuer has covenanted and agreed to establish and maintain just and equitable rates and charges for the use of the System and the services rendered thereby, which shall be sufficient, together with other revenues of the System, to provide for the reasonable expenses of operation, repair and maintenance of the System, and to leave a balance each year equal to at least 115% of the maximum amount required in any year for principal of and interest on the Series 1998 A Bonds and all other obligations secured by a lien on or payable from such revenues prior to or on a parity with the Series 1998 A Bonds, provided however, that so long as there exists in the Series 1998 A Bonds Reserve Account an amount at least equal to the maximum amount of principal and interest which will become due on the Series 1998 A Bonds in the then current or any succeeding year, and in the respective reserve accounts established for any other obligations outstanding prior to or on a parity with the Series 1998 A Bonds, or an amount at least equal to the requirement therefor, such percentage may be reduced to 110%. The Issuer has entered into certain further covenants with the registered owners of the Bonds for the terms of which reference is made to the Bond Legislation. Remedies provided the registered owners of the Bonds are exclusively as provided in the Bond Legislation, to which reference is here made for a detailed description thereof.

Subject to the registration requirements set forth herein, this Bond is transferable, as provided in the Bond Legislation, only upon the books of the Registrar by the registered owner,

or by its attorney duly authorized in writing, upon the surrender of this Bond together with a written instrument of transfer satisfactory to the Bond Registrar duly executed by the registered owner or its attorney duly authorized in writing.

Subject to the registration requirements set forth herein, this Bond, under the provision of the Act is, and has all the qualities and incidents of, a negotiable instrument under the Uniform Commercial Code of the State of West Virginia.

All money received from the sale of this Bond, after reimbursement and repayment of all amounts advanced for preliminary expenses as provided by law, shall be applied solely to the payment of the Costs of the Project described in the Bond Legislation, and there shall be and hereby is created and granted a lien upon such moneys, until so applied, in favor of the owner of this Bond.

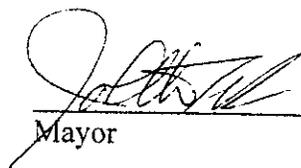
In accordance with the requirements of the United States Department of Agriculture for the issuance of parity obligations, the Bonds will be in default should any proceeds of the Bonds be used for a purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and in the issuance of this Bond have existed, have happened, and have been performed in due time, form and manner as required by law, and that the amount of this Bond, together with all other obligations of the Issuer, does not exceed any limit prescribed by the Constitution or statutes of the State of West Virginia and that a sufficient amount of the revenues of the System has been pledged to and will be set aside into said special fund by the Issuer for the prompt payment of the principal of and interest on this Bond.

All provisions of the Bond Legislation, resolutions and statutes under which this Bond is issued shall be deemed to be a part of the contract evidenced by this Bond to the same extent as if written fully herein.

IN WITNESS WHEREOF, THE CITY OF SUMMERSVILLE has caused this Bond to be signed by its Mayor and its corporate seal to be hereunto affixed and attested by its Recorder, and has caused this Bond to be dated January 6, 1998.

[SEAL]

  
\_\_\_\_\_  
Mayor

ATTEST:

  
\_\_\_\_\_  
Recorder

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of The City of Summersville Water and Sewer System Revenue Bonds, (West Virginia Infrastructure and Job Development Council), Series 1998 A, described in the within-mentioned Bond Legislation and has been duly registered in the name of the registered owner set forth above, as of the date set forth below.

Date: January 6, 1998

One Valley Bank,  
as Registrar

By \_\_\_\_\_  
Its Authorized Officer



### Quarterly Debt Service Schedule

City of Summersville				
\$639,000				
Infrastructure Fund Loan				
Term (Yrs.): 40		Loan Rate: 0.00%		
First Payment: 03/01/99		Final Payment: 12/1/37		
12/1/97				
3/1/98				
6/1/98				
9/1/98				
12/1/98				
3/1/99	1	4,096.15	-	4,096.15
6/1/99	2	4,096.16	-	4,096.16
9/1/99	3	4,096.15	-	4,096.15
12/1/99	4	4,096.16	-	4,096.16
3/1/00	5	4,096.15	-	4,096.15
6/1/00	6	4,096.16	-	4,096.16
9/1/00	7	4,096.15	-	4,096.15
12/1/00	8	4,096.16	-	4,096.16
3/1/01	9	4,096.15	-	4,096.15
6/1/01	10	4,096.16	-	4,096.16
9/1/01	11	4,096.15	-	4,096.15
12/1/01	12	4,096.16	-	4,096.16
3/1/02	13	4,096.15	-	4,096.15
6/1/02	14	4,096.16	-	4,096.16
9/1/02	15	4,096.15	-	4,096.15
12/1/02	16	4,096.16	-	4,096.16
3/1/03	17	4,096.15	-	4,096.15
6/1/03	18	4,096.16	-	4,096.16
9/1/03	19	4,096.15	-	4,096.15
12/1/03	20	4,096.16	-	4,096.16
3/1/04	21	4,096.15	-	4,096.15
6/1/04	22	4,096.16	-	4,096.16
9/1/04	23	4,096.15	-	4,096.15
12/1/04	24	4,096.16	-	4,096.16
3/1/05	25	4,096.15	-	4,096.15
6/1/05	26	4,096.16	-	4,096.16
9/1/05	27	4,096.15	-	4,096.15
12/1/05	28	4,096.16	-	4,096.16
3/1/06	29	4,096.15	-	4,096.15
6/1/06	30	4,096.16	-	4,096.16
9/1/06	31	4,096.15	-	4,096.15
12/1/06	32	4,096.16	-	4,096.16
3/1/07	33	4,096.15	-	4,096.15
6/1/07	34	4,096.16	-	4,096.16
9/1/07	35	4,096.15	-	4,096.15
12/1/07	36	4,096.16	-	4,096.16

### Quarterly Debt Service Schedule

3/1/08	37	4,096.15		4,096.15
6/1/08	38	4,096.16		4,096.16
9/1/08	39	4,096.16		4,096.16
12/1/08	40	4,096.16		4,096.16
3/1/09	41	4,096.15		4,096.15
6/1/09	42	4,096.16		4,096.16
9/1/09	43	4,096.15		4,096.15
12/1/09	44	4,096.16		4,096.16
3/1/10	45	4,096.15		4,096.15
6/1/10	46	4,096.16		4,096.16
9/1/10	47	4,096.15		4,096.15
12/1/10	48	4,096.16		4,096.16
3/1/11	49	4,096.15		4,096.15
6/1/11	50	4,096.16		4,096.16
9/1/11	51	4,096.15		4,096.15
12/1/11	52	4,096.16		4,096.16
3/1/12	53	4,096.15		4,096.15
6/1/12	54	4,096.16		4,096.16
9/1/12	55	4,096.15		4,096.15
12/1/12	56	4,096.16		4,096.16
3/1/13	57	4,096.15		4,096.15
6/1/13	58	4,096.16		4,096.16
9/1/13	59	4,096.15		4,096.15
12/1/13	60	4,096.16		4,096.16
3/1/14	61	4,096.15		4,096.15
6/1/14	62	4,096.16		4,096.16
9/1/14	63	4,096.15		4,096.15
12/1/14	64	4,096.16		4,096.16
3/1/15	65	4,096.15		4,096.15
6/1/15	66	4,096.16		4,096.16
9/1/15	67	4,096.15		4,096.15
12/1/15	68	4,096.16		4,096.16
3/1/16	69	4,096.15		4,096.15
6/1/16	70	4,096.16		4,096.16
9/1/16	71	4,096.15		4,096.15
12/1/16	72	4,096.16		4,096.16
3/1/17	73	4,096.15		4,096.15
6/1/17	74	4,096.16		4,096.16
9/1/17	75	4,096.15		4,096.15
12/1/17	76	4,096.16		4,096.16
3/1/18	77	4,096.15		4,096.15
6/1/18	78	4,096.16		4,096.16
9/1/18	79	4,096.15		4,096.15
12/1/18	80	4,096.16		4,096.16
3/1/19	81	4,096.15		4,096.15
6/1/19	82	4,096.16		4,096.16
9/1/19	83	4,096.15		4,096.15
12/1/19	84	4,096.16		4,096.16
3/1/20	85	4,096.15		4,096.15

### Quarterly Debt Service Schedule

6/1/20	85	4,096.16		4,096.16
9/1/20	87	4,096.16		4,096.16
12/1/20	88	4,096.16		4,096.16
3/1/21	89	4,096.15		4,096.15
6/1/21	90	4,096.16		4,096.16
9/1/21	91	4,096.16		4,096.16
12/1/21	92	4,096.16		4,096.16
3/1/22	93	4,096.15		4,096.15
6/1/22	94	4,096.16		4,096.16
9/1/22	95	4,096.16		4,096.16
12/1/22	96	4,096.16		4,096.16
3/1/23	97	4,096.15		4,096.15
6/1/23	98	4,096.16		4,096.16
9/1/23	99	4,096.15		4,096.15
12/1/23	100	4,096.16		4,096.16
3/1/24	101	4,096.15		4,096.15
6/1/24	102	4,096.16		4,096.16
9/1/24	103	4,096.15		4,096.15
12/1/24	104	4,096.16		4,096.16
3/1/25	105	4,096.15		4,096.15
6/1/25	106	4,096.16		4,096.16
9/1/25	107	4,096.15		4,096.15
12/1/25	108	4,096.16		4,096.16
3/1/26	109	4,096.15		4,096.15
6/1/26	110	4,096.16		4,096.16
9/1/26	111	4,096.15		4,096.15
12/1/26	112	4,096.16		4,096.16
3/1/27	113	4,096.16		4,096.15
6/1/27	114	4,096.16		4,096.16
9/1/27	115	4,096.15		4,096.15
12/1/27	116	4,096.16		4,096.16
3/1/28	117	4,096.15		4,096.15
6/1/28	118	4,096.16		4,096.16
9/1/28	119	4,096.15		4,096.15
12/1/28	120	4,096.16		4,096.16
3/1/29	121	4,096.15		4,096.15
6/1/29	122	4,096.16		4,096.16
9/1/29	123	4,096.15		4,096.15
12/1/29	124	4,096.16		4,096.16
3/1/30	125	4,096.15		4,096.15
6/1/30	126	4,096.16		4,096.16
9/1/30	127	4,096.15		4,096.15
12/1/30	128	4,096.16		4,096.16
3/1/31	129	4,096.15		4,096.15
6/1/31	130	4,096.16		4,096.16
9/1/31	131	4,096.15		4,096.15
12/1/31	132	4,096.16		4,096.16
3/1/32	133	4,096.15		4,096.15
6/1/32	134	4,096.16		4,096.16

### Quarterly Debt Service Schedule

9/1/32	136	4,096.15	-	4,096.15
12/1/32	136	4,096.15	-	4,096.15
3/1/33	137	4,096.15	-	4,096.15
6/1/33	138	4,096.16	-	4,096.16
9/1/33	139	4,096.15	-	4,096.15
12/1/33	140	4,096.16	-	4,096.16
3/1/34	141	4,096.15	-	4,096.15
6/1/34	142	4,096.16	-	4,096.16
9/1/34	143	4,096.15	-	4,096.15
12/1/34	144	4,096.16	-	4,096.16
3/1/35	145	4,096.15	-	4,096.15
6/1/35	146	4,096.16	-	4,096.16
9/1/35	147	4,096.15	-	4,096.15
12/1/35	148	4,096.16	-	4,096.16
3/1/36	149	4,096.15	-	4,096.15
6/1/36	150	4,096.16	-	4,096.16
9/1/36	151	4,096.15	-	4,096.15
12/1/36	152	4,096.16	-	4,096.16
3/1/37	153	4,096.15	-	4,096.15
6/1/37	154	4,096.16	-	4,096.16
9/1/37	155	4,096.15	-	4,096.15
12/1/37	156	4,096.16	-	4,096.16
		<b>639000.39</b>	<b>0.00</b>	<b>639000.39</b>

**Summary Statistics:**

Average Annual Cost	\$15,875.79
Average Life	20.875
Average Interest Rate	0.0000%
Net Interest Cost (NIC)	0.0000%
Gross Interest Cost (GIC)	0.0000%
Tax Yield (Part. Section 72)	0.0000%
Annual Yield (AY)	0.0000%

**Data for Form 8038:**

	Line 19	Line 20
(a)	0.0000%	N/A
(b)	0.0000%	N/A
(c)	4,096.16	\$639,000.39
(d)	4,096.16	\$639,000.39
(e)	N/A	20.875
(f)	N/A	0.0000%
(g)	N/A	0.0000%

(Form of)

ASSIGNMENT

FOR VALUE RECEIVED the undersigned sells, assigns, and transfers unto

the within Bond and does hereby irrevocably constitute and appoint \_\_\_\_\_,  
Attorney to transfer the said Bond on the books kept for registration of the within Bond of the  
said Issuer with full power of substitution in the premises.

Dated: \_\_\_\_\_, \_\_\_\_.

In the presence of:

\_\_\_\_\_

\_\_\_\_\_



# West Virginia Infrastructure & Jobs Development Council

**Public Members:**

James D. Williams, Chairman  
St. Albans  
James L. Harrison, Sr., Vice Chairman  
Princeton  
Lloyd P. Adams, P.E.  
Wheeling  
Sheirl L. Fletcher  
Morgantown

1320 One Valley Square  
Charleston, West Virginia 25301  
Telephone: (304) 558-4607  
Facsimile: (304) 558-4609

Susan J. Riggs, Esquire  
Executive Secretary

August 11, 1997

The Honorable John Steven LeRose  
Mayor, City of Summersville  
P. O. Box 525  
Summersville, WV 26651

Re: Binding Commitment Letter  
Water Extension Project 96W-213

Dear Mayor LeRose:

The West Virginia Infrastructure and Jobs Development Council (Council) provides this binding offer of a loan of approximately \$639,700 and a grant of approximately \$743,000 for the City of Summersville's (City) proposed project for a water extension to the Glade Creek area (Project). The loan and grant will be subject to the terms set forth on Schedule A attached hereto and incorporated herein by reference. The final loan and grant amounts will be established after the City has received bids for the Project. In the event the actual Project costs are lower than the amounts estimated, the grant will be reduced accordingly. The Water Development Authority (Authority), as administrator of the Infrastructure Fund, has set aside moneys in the Infrastructure Fund to make this loan and grant upon the City's compliance with the program requirements. This commitment is good for 180 days from the date hereof. If the City has not entered into loan and grant agreements by February 10, 1998, then this commitment shall expire.

The Council may, when justifiable circumstances occur, offer to extend the commitment expiration date. It should be understood by the City that the offer to extend the time period is at the sole discretion of the Council.

The Authority will enter into loan and grant agreements with the City following receipt of the completed Schedule B (the form of which is attached hereto): a final, nonappealable order from

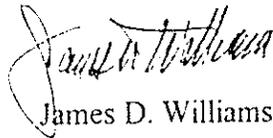
The Honorable John Steven LeRose  
August 11, 1997  
Page 2

the Public Service Commission authorizing construction of the Project; evidence of binding commitments for other funding; evidence of all permits; evidence of acceptable bids; requisite bond-related documents and opinions in a form and substance satisfactory to the Authority and the Council and any other documents requested by the Council. Following execution of the loan agreement, the Council will establish a closing date.

No statements or representations made before or after the issuance of this Binding Commitment Letter by any person, member of the Council, or agent or employee of the Authority shall be construed as approval to alter or amend this Commitment, as all such amendments or alterations shall only be made in writing after approval of the Council.

If the City has any questions regarding this commitment, please contact Susan J. Riggs at the above-referenced telephone number.

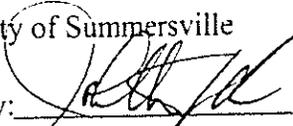
Sincerely,

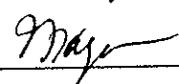
  
James D. Williams

JDW/bh  
Attachments

NOTE: This letter is sent in triplicate. Please acknowledge receipt on two copies and immediately return one to the Council at the above address, and one to the Authority at 1201 Dunbar Avenue, Dunbar, West Virginia 25064.

City of Summersville

By:  \_\_\_\_\_

Its:  \_\_\_\_\_

Date: 8-13-97

\$639,000  
THE CITY OF SUMMERSVILLE, WEST VIRGINIA  
WATER AND SEWER SYSTEM REVENUE BONDS  
(WEST VIRGINIA INFRASTRUCTURE AND JOB DEVELOPMENT COUNCIL)  
SERIES 1998 A

In reliance upon the parity test certificate of John Blair, CPA, the undersigned duly authorized representative of the West Virginia Water Development Authority, the registered owner of the entire outstanding aggregate principal amount of the Water and Sewer System Revenue Bonds Series 1990 A Bonds in the original principal amount of \$281,848, Water and Sewer System Revenue Bonds Series 1990 B Bonds in the original principal amount of \$13,152, Water and Sewer System Revenue Bonds Series 1991 A Bonds in the original principal amount of \$790,057, and Water and Sewer System Revenue Bonds Series 1991 B Bonds in the original principal amount of \$35,671, all of which were issued by The City of Summersville (the "Issuer"), hereby consents to the issuance of Water and Sewer System Revenue Bonds (West Virginia Infrastructure and Job Development Council), Series 1998 A, in the aggregate amount of \$639,000, by the Issuer under the terms of the Ordinance authorizing such Series 1998 A Bonds, on a parity, with respect to lien, pledge and source of and security for payment, with the Issuer's Series 1990 A Bonds and the Issuer's Series 1991 A Bonds, and senior to the Issuer's Series 1990 B Bonds and the Issuer's Series 1991 B Bonds.

Dated this 6<sup>th</sup> day of January, 1998.

WEST VIRGINIA WATER  
DEVELOPMENT AUTHORITY

By: *Daniel B. Gorbosky*  
Director



United States  
Department of  
Agriculture

Rural Development

Federal Building, Room 320  
75 High Street  
Morgantown, WV 26505  
TELEPHONE: (304) 291-4796  
FAX: (304) 291-4159  
TTY/TDD: (304) 284-5941

## CONSENT TO THE ISSUANCE OF PARITY BONDS

The undersigned, Robert D. Lewis, State Director of the United States Department of Agriculture, Rural Development, hereby consents to the issuance, by the City of Summersville, of not more than \$700,000 in aggregate principal amount of Water and Sewer System Revenue Bonds, Series 1997 A. The undersigned further acknowledges and agrees that such bonds shall be secured by a first lien on the revenues of the City's water and sewer system, which first lien is to be shared with the City's 1967 Water and Sewer Note, the Series 1990 A Water and Sewer Revenue Bonds and the Series 1991 A Water and Sewer Revenue Bonds.

Dated this 23rd day of December, 1997.

UNITED STATES DEPARTMENT OF AGRICULTURE  
RURAL DEVELOPMENT

ROBERT. D. LEWIS  
State Director

(August 1996)

## GRANT AGREEMENT

This Grant Agreement entered into between the West Virginia Water Development Authority (the "Authority") on behalf of the West Virginia Infrastructure and Jobs Development Council (the "Council") and the City of Summersville (the "Governmental Agency").

### RECITALS

WHEREAS, the Council has authorized the Authority to make a grant to the Governmental Agency in the amount not to exceed \$593,366 (the "Grant") for the purpose of the acquisition and construction/design/planning of a project for which a preliminary application has been submitted and approved by the Council;

WHEREAS, the Governmental Agency wishes to accept the Grant upon such terms and conditions as are hereinafter set forth for the purpose of constructing the project described in Exhibit A attached hereto and incorporated herein by reference (the "Project");

WHEREAS, this Agreement sets forth the Council, the Authority and the Governmental Agency's understanding and agreements with regard to the Grant.

NOW, THEREFORE, in consideration of the premises and the mutual agreements hereinafter contained, the Authority and the Governmental Agency hereby agree as follows:

### TERMS

1. Prior to the distribution of the Grant, the Governmental Agency shall provide the Authority with a Project budget and an anticipated monthly draw schedule reflecting the receipt dates and amounts from other funding sources.
2. The Authority shall advance the Council's share of the Project costs from the Grant from time to time upon receipt of a requisition evidencing the costs incurred, which requisition must be satisfactory to the Authority and the Council.
3. The monthly requisition will also set forth (i) the amounts requested for that requisition period from all other funding agencies, and (ii) the amounts advanced for the Project to date from all other funding agencies.
4. The Governmental Agency will use the proceeds of the Grant only for the purposes specifically set forth in Exhibit A.
5. The Governmental Agency shall comply with and is bound by the Council's rules set forth as Title 167, Series 1 and more particularly Section 5.9 with respect to the sale of the Project.

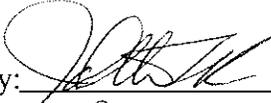
6. The Governmental Agency acknowledges that the Grant may be reduced, from time to time, to reflect actual Project costs and availability of other funding.

7. The Governmental Agency shall submit all proposed change orders to the Council for written approval. The Governmental Agency shall obtain the written approval of the Council before expending any proceeds of the Grant held in "contingency" as set forth in the final Schedule B. The Governmental Agency shall obtain the written approval of the Council before expending any proceeds of the Grant available due to bid/construction/project underruns.

8. This Agreement shall be governed by the laws of the State of West Virginia.

IN WITNESS WHEREOF, the parties hereto have caused this Grant Agreement to be executed by the respective duly authorized officers as of the date executed below by the Authority.

CITY OF SUMMERSVILLE

By:   
Its: Mayor

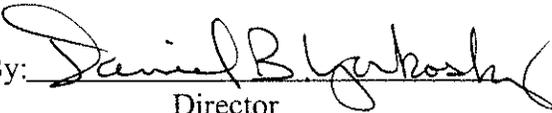
Date: 1/06/98

SEAL

ATTEST

  
Its: Ron Ellen Cook

WEST VIRGINIA WATER  
DEVELOPMENT AUTHORITY

By:   
Director

Date: 1/06/98

SEAL

ATTEST

  
Secretary - Treasurer

## EXHIBIT A

The project consists of approximately 4,600 LF of 16" waterline, 24,600 LF of 8" waterline, 9,700 LF of 6" waterline, 4,300 LF of 2" waterline, valves, hydrants, air release and vacuum valves, service lines, meter settings, and all other necessary appurtenances. The total cost of the project is \$1,561,366.

Rec'd 9-9-92



STATE OF WEST VIRGINIA  
OFFICE OF THE GOVERNOR  
CHARLESTON 25305

September 4, 1992

GASTON CAPERTON  
GOVERNOR

The Honorable Don McClung  
President  
Nicholas County Commission  
700 Main Street  
Summersville, West Virginia 26551

Dear Commissioner McClung:

Thank you for your application to the Small Cities Block Grant Program for fiscal year 1992.

I am pleased to approve a grant in the amount of \$750,000 to the Nicholas County Commission. These funds will enable you to fund the Central Public Service District's water system improvements.

In order to most effectively use the limited dollars available, I hereby commit \$375,000 from our fiscal year 1992 allocation which will be immediately available to you. The remaining \$375,000 necessary to complete this project will be evaluated and committed in the coming fiscal year. I encourage you to expedite this project and reach its completion as quickly as possible with this funding strategy in mind. My Community Development staff will contact you to complete the necessary contracts in order to proceed with your project.

It is with pleasure that I am able to work with you to make this improvement a reality for the citizens of Nicholas County.

Sincerely

A handwritten signature in black ink that reads "Gaston Caperton". The signature is stylized and written in a cursive-like font.

Gaston Caperton  
Governor

GC:bss

**STATE OF WEST VIRGINIA  
WEST VIRGINIA DEVELOPMENT OFFICE  
NOTICE OF GRANT AWARD CHANGE**

<b>Fiscal Year</b> 1994	<b>Date</b> 8-16-93	<b>State Account #</b> 121-8029-05-025-13	<b>Agreement Date</b> 11-19-92	<b>Grant Number</b> 93-253
<b>Grantee Name &amp; Address</b>  Nicholas County Commission Nicholas County Courthouse Summersville, WV 26551		<b>F.E.I.N.</b> 556-000-371	<b>Purpose of Change:</b> Additional Funds	
			<b>Program Name:</b> SCBG	
			<b>Project Name:</b> Water System Improvements	
			<b>Grant ID:</b> B92DC540001; B93DC540001	
			<b>Project Number:</b> 92SCBG0102X	

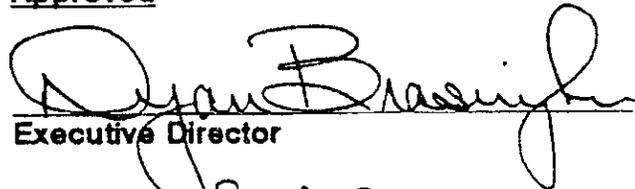
**Description of Change**

Change Order # 1

<b>Justification for Change</b>  Additional funds needed to complete the project.	<b>Previous Total</b>	<u>\$375,000.00</u>
	<b>Increase</b>	<u>375,000.00</u>
	<b>Decrease</b>	<u>                    </u>
	<b>New Total</b>	<u>\$750,000.00</u>

TERMS AND CONDITIONS OF ORIGINAL AGREEMENT ARE ON FILE IN THE WEST VIRGINIA DEVELOPMENT OFFICE AND AVAILABLE FOR INSPECTION. A COPY OF THE ORIGINAL AGREEMENT IS ATTACHED TO TRANSMITTAL \_\_\_\_\_ PROCESSED ON OR ABOUT \_\_\_\_\_ PAYMENT # \_\_\_\_\_

**Approved**

  
Executive Director

8-18-93  
Date

Section 2, Continued					
6. Activity Name: Central PSD* - Water System Project *Central PSD has been dissolved.					
COST CATEGORY	SCBG	OTHER	SOURCE OTHER	AVAILABLE (YES OR NO)	TOTAL
ADMINISTRATION	\$ 40,000.00 ✓				\$ 40,000.00
ARCH/ENGINEER	\$ 157,502.00 ✓	\$ 141,658.00	RECD		\$ 299,160.00
LAND ACQUISITION/LEGAL	\$ 23,700.00 ✓	\$ 44,800.00	RECD		\$ 68,500.00
RELOCATION					
DEMO/CLEARANCE					
CONSTRUCTION	\$ 517,298.00 ✓	\$1,677,487.00	RECD		\$2,154,785.00
ACCOUNTANT	\$ 10,500.00 ✓				\$ 10,500.00
AUDIT	\$ 1,000.00 ✓				\$ 1,000.00
LMI ASSESSMENTS					
PROJECT CONTINGENCY		\$ 152,500.00	RECD		\$ 152,500.00
INTERIM FINANCING		\$ 52,300.00	RECD		\$ 52,300.00
COP INT.		\$ 20,255.00	RECD		\$ 20,255.00
<b>TOTAL</b>	<b>\$ 750,000.00</b>	<b>\$2,089,000.00</b>			<b>\$2,839,000.00</b>

Attach cost estimates and documentation regarding "other" funds status.

If other funds are not currently available for expenditure, list the milestones to be achieved to obtain the other funds and estimated dates when milestones will be achieved.

Milestone

Estimated Date

Section 2, Continued		CITY OF SUMMERSVILLE			
6. Activity Name: Central PSD* Water System Project * Central PSD has been dissolved					
COST CATEGORY	SCBG	OTHER	SOURCE OTHER	AVAILABLE (YES OR NO)	TOTAL
ADMINISTRATION	(20,000)*	20,900**	IJDC		20,000
ARCH/ENGINEER	53,251	103,249	IJDC		156,500
LAND ACQUISITION/LEGAL	11,850	8,150	IJDC		20,000
RELOCATION					
DEMO/CLEARANCE					
CONSTRUCTION	258,649	782,351	IJDC		1,041,000
ACCOUNTANT	5,250	(750.00)***	IJDC		4,500
AUDIT					
LMI ASSESSMENTS					
PROJECT CONTINGENCY		23,000	IJDC		23,000
INTERIM FINANCING		5,000	IJDC		5,000
CAP INTEREST/BOND COUNSEL		30,000	IJDC		30,000
<b>TOTAL</b>	<b>\$ 329,000</b>	<b>971,000</b>			<b>\$1,300,000</b>

JAN - 3 1996

Attach cost estimates and documentation regarding "other" funds status.

If other funds are not currently available for expenditure, list the milestones to be achieved to obtain the other funds and estimated dates when milestones will be achieved.

Milestone

Estimated Date

- \* Included in Nicholas County Commission SCBG budget
- \*\* Does not correlate to SCBG Budget - All "Administration" expense will be directed via the Nicholas County Commission
- \*\*\* Not correlated at this time to IJDC Pre-Application

Section 2, Continued		CRAIGSVILLE PSD			
6. Activity Name: Central PSD* Water System Project * Central PSD has been dissolved					
COST CATEGORY	SCBG	OTHER	SOURCE OTHER	AVAILABLE (YES OR NO)	TOTAL
ADMINISTRATION		46,000	IJDC		46,000**
ARCH/ENGINEER	53,251	183,849	IJDC		237,100
LAND ACQUISITION/LEGAL	11,850	27,150	IJDC		39,000
RELOCATION					
DEMO/CLEARANCE					
CONSTRUCTION	258,649	999,251	IJDC		1,257,900
ACCOUNTANT	5,250				5,250**
AUDIT					
LMI ASSESSMENTS					
PROJECT CONTINGENCY		119,750***	IJDC		119,750
INTERIM FINANCING					
CAP INTEREST/BOND COUNSEL		10,000	IJDC		10,000
<b>TOTAL</b>	<b>\$ 329,000</b>	<b>1,386,000</b>			<b>\$1,715,000</b>

Attach cost estimates and documentation regarding "other" funds status.

If other funds are not currently available for expenditure, list the milestones to be achieved to obtain the other funds and estimated dates when milestones will be achieved.

Milestone Estimated Date

- \* Not included in IJDC Pre-Application
- \*\* Not correlated to SCBG Budget
- \*\*\* IJDC Budget reduced by \$5,250 to include "Accountant Expenses" budgeted by SCBG

Section 2, Continued		NICHOLAS COUNTY COMMISSION			
6. Activity Name: Central PSD* Water System Project * Central PSD has been dissolved					JUN 3 1996
COST CATEGORY	SCBG	OTHER	SOURCE OTHER	AVAILABLE (YES OR NO)	TOTAL
ADMINISTRATION	40,000				40,000
ARCH/ENGINEER	51,000				51,000
LAND ACQUISITION/LEGAL					
RELOCATION					
DEMO/CLEARANCE					
CONSTRUCTION					
ACCOUNTANT					
AUDIT	1,000				1,000
LMI ASSESSMENTS					
PROJECT CONTINGENCY					
INTERIM FINANCING					
CAP INTEREST/BOND COUNSEL					
<b>TOTAL</b>	<b>\$ 92,000</b>				<b>\$ 92,000</b>

Attach cost estimates and documentation regarding "other" funds status.

If other funds are not currently available for expenditure, list the milestones to be achieved to obtain the other funds and estimated dates when milestones will be achieved.

Milestone

Estimated Date

INTERGOVERNMENTAL AGREEMENT

This Intergovernmental Agreement, made and entered into this 6th day of March, 1996, by and between the CITY OF SUMMERSVILLE, a municipal corporation, hereinafter referred to as "Summersville", party of the first part; CRAIGSVILLE PUBLIC SERVICE DISTRICT, a West Virginia Public Service District, hereinafter referred to as "Craigsville", party of the second part, and the COUNTY COMMISSION OF NICHOLAS COUNTY, WEST VIRGINIA, a statutory corporation, hereinafter referred to as "Commission", party of the third part.

WHEREAS, pursuant to the provisions of West Virginia Code §8-23-1 et seq and West Virginia Code §16-13A-1 et seq, the parties desire to set forth their Agreement to unite as local sponsors and to cooperate with one another on the basis of the mutual advantage to the parties and to consolidate the functions and, thereby, provide services and facilities to areas of need in a manner pursuant to the terms hereof, which will result in the most economical and expeditious construction and implementation of installation of a water distribution system consisting of approximately twenty-one miles of water line with water storage tank, related pump stations, pressure reducing stations, valves, fittings, hydrants, road and creek crossings and other incidental and necessary construction; and

WHEREAS, it is the intent of the parties to this Agreement to cooperate with one another pursuant to the terms and conditions as provided by law and as set forth herein in order to

accomplish the purposes of this agreement; and

WHEREAS, the State of West Virginia through its Development Office committed a HUD Small City's Block in the amount of \$750,000.00 by letter dated 4th day of September, 1992, to the Commission to be used for the construction of a water distribution system within the confines of a certain geographic area between the City of Summersville and Craigsville primarily along West Virginia Route No. 41 as defined on Exhibit A; and

WHEREAS, additional funds will be required to complete the construction of the aforesaid water distribution system; and

WHEREAS, the aforesaid HUD Small Cities Block Grant shall be allocated by the Commission with the goal to minimize and equalize the average monthly water bill for the customers to be served hereby and will be budgeted and allocated among the project based on bids yet to be received from contractors, contingencies arising during construction, and funding limitations; and

WHEREAS, Summersville and Craigsville, upon completion of the aforesaid water system will provide water to their areas as hereinafter defined (Exhibit A) and will retain title to their improvements contained within their respective areas of proposed water distribution system and thereby benefit from the construction of this project; and

NOW THEREFORE WITNESSETH, that for and consideration of the mutual benefits to the parties hereto and further consideration of mutual promises and covenants and agreements as set forth

0035 P.06 006

herein, the parties hereby pray as follows:

1. The parties hereto will jointly cooperate with one another to develop and enable construction of a water distribution system within their geographic limits as hereinafter defined as Exhibit A.

2. The parties anticipate that the project duration shall be twelve (12) months, contingent upon final approval of all contract documents by their governing boards, the State Health Department and the West Virginia Public Service Commission and further contingent upon funding limitations and other contingencies.

3. This agreement shall be in effect for a period one (1) fiscal year, subject to annual renewal for any additional period time needed to complete all phases of the project, each of which annual renewal periods shall be limited to one (1) fiscal year; provided that, in addition to the right of non-renewal, either party hereto shall have the right to terminate this agreement on any 12-month anniversary of the date of this agreement by giving to the other party 30 days written notice of such termination.

4. Summersville agrees through a competitive bidding process pursuant to applicable law for the installation of the water lines and, if necessary one (1) water storage tank contained within the western sector of the water distribution system as further defined in Exhibit A.

5. Craigsville agrees through a competitive bidding process pursuant to applicable law to construct, and thereafter

operate and maintain a water storage tank with a capacity to store up to 150,000 gallons of water located in the eastern sector together with a master meter as defined on Exhibit A.

6. Craigsville agrees through a competitive bidding process pursuant to applicable law for the installation of the water lines contained within the eastern sector of the water distribution system as further defined in Exhibit A.

7. The parties hereto agree that they shall use their best efforts to complete the bidding process concurrently.

8. It is recognized by the parties hereto that the West Virginia Development Office and any participating banks or governmental agencies shall have the right to exercise proper administrative control over this project at all times, but in no way shall they alter plans and specifications, once such plans have been approved and bid or contracted to be bid by either Craigsville or Summersville.

9. All easements, rights of ways, and property shall be obtained and held in the name of the respective bodies within their geographic areas except as set forth specifically hereinafter. All required permits, authorization and approvals shall become a part of this Agreement and incorporated herein by reference.

10. Each of the parties to this agreement agree to use their best efforts to apply for and receive grants and/or low interest loans from all reasonably available sources prior to the allocation of the block grant by the commission as

0035 PAGE 008

hereinafter provided. The Commission agrees to allocate the remaining monies of the \$750,000.00 HUD Small Cities Block Grant to Summersville and Craigsville in relation to the number of new customers to be served within each bodies geographic area as hereinafter defined with the ultimate goal to minimize and equalize the overall cost of the project to Craigsville and Summersville.

11. The division line for purposes of establishing the eastern and western sectors referred to herein shall be at or near the top of what is commonly known as Big Cut Hill located on Route 41 near Persinger, Nicholas County, West Virginia, and as more particularly shown on a map attached hereto as Exhibit A. Craigsville agrees to install a master meter pursuant to PSC rules and regulations in the main distribution line, for the purpose of monitoring the flow of water between the respective territories.

12. After the construction of the water distribution system, it shall be the sole and exclusive responsibility of Summersville and Craigsville to sell water to its customers and bill the customers within their respective sectors of the water distribution system, as set forth hereinabove, for any amounts due for providing said water to the customers within the respective sectors of said system, and to collect all amounts due by customers for providing water to the respective sectors of said system. Summersville and Craigsville shall also be responsible for determining the appropriate amount to be billed

to each customer by monitoring and checking each meter for the appropriate time period.

13. Summersville and Craigsville shall cooperate with one another to assure that all customers set forth in the respective preliminary engineering reports to be developed are properly served with water. Summersville and Craigsville shall be responsible for providing any and all manpower and equipment necessary to monitor, check and bill each customer for the water services within their respective sector of said system, and collect all amounts due from customers within their respective sector of said system.

14. Summersville and Craigsville shall be solely and exclusively responsible for operating and maintaining the water distribution system within their respective sector of said system after the construction of said system, including any water leaks or water loss except as provided in paragraph 4 herein.

15. The amounts charged by Summersville and Craigsville for said water shall be those which are approved by the West Virginia Public Service Commission. Craigsville and Summersville agree that should a need arise and the other party has the capabilities to provide for such need to sell water to the other entity at a bulk rate as determined by the West Virginia Public Service Commission.

16. A substantial completion inspection of all aspects of the water distribution project shall be made by Summersville, Craigsville and the Nicholas County Commission. A project "punch

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list" shall be prepared and responded to before final acceptance of the project.

17. Summersville and Craigsville shall indemnify and hold harmless each other from any and all actions, causes of actions, claims, demands, suits, losses, damages, and injury (including death) to persons and property whatsoever that may result from or arise out of the operation or maintenance of the water distribution system within the respective sectors of said system attributable to either Summersville or Craigsville after the construction of said system is completed and the operation of the respective sectors of said system becomes the responsibility of Summersville and/or Craigsville. These covenants of indemnity shall survive termination, cancellation, rescission or expiration of this Agreement.

18. The provisions of this Agreement are in addition to and not in derogation of any power and authority vested in the parties hereto under any constitutional, statutory or other provisions which may now or hereafter be in affect.

19. This agreement shall become effective upon the approval hereof by the appropriate agent of the State of West Virginia, which may be the Attorney General of the State of West Virginia or upon the failure of the Attorney General or the appropriate governmental agent to act or approve the same within thirty (30) days of this submission to such agent for review, all pursuant to the provisions of Chapter 8, Article, Section 3, of the West Virginia Code.

20. Neither party shall commence implementation of this agreement until such time as the West Virginia Development Office and the West Virginia Infrastructure Job Development Council have approved the project area and approved allocation of the HUD SCBG funds.

21. All notices, payments, consent, and other communications between the parties hereto shall be in writing, and to the parties at their respective following addresses:

City of Summersville  
P. O. Box 525  
Summersville, West Virginia 26651

Craigsville Public Service District  
P.O. Box 368  
Craigsville, West Virginia 26205

Nicholas County Commission  
Courthouse  
Summersville, West Virginia 26651

22. In the event any provision of this agreement conflicts with the law under which this agreement is to be construed or if any such provision be held invalid by a court with jurisdiction over the parties to this agreement, such provision shall be deleted from the agreement and the agreement shall be construed to give effect to the remaining provisions thereof.

23. This Agreement shall be construed and governed by the laws of the state of West Virginia.

24. This Agreement constitutes the entire agreement of the parties hereto with respect to the matters set forth herein and supersedes any and all prior agreements, arrangements and understandings between the parties. No inducements contrary to the

terms of this Agreement exist. No waiver of any term, provision or condition of this Agreement, whether by conduct or otherwise, in any one or more instances shall be deemed to be construed as a further or continuing waiver of any such term, provision or condition or any other term, provision or condition of this Agreement. This Agreement may be modified in writing by mutual agreement of the parties hereto.

25. This agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

WITNESS the following signatures and seals:

City of Summersville

BY: [Signature]

ITS [Signature]

Craigsville Public Service District

BY: [Signature]  
Chairman

County Commission of Nicholas County, West Virginia

BY: [Signature]  
ITS: President

Attorney General  
State of West Virginia

APPROVED AS TO FORM PRIOR TO  
ACKNOWLEDGEMENT THEREOF, THIS

20<sup>th</sup> day of February, 1996

DARRELL V. McGRAV

ATTORNEY GENERAL

BY: *[Signature]*

DEPUTY ATTORNEY GENERAL

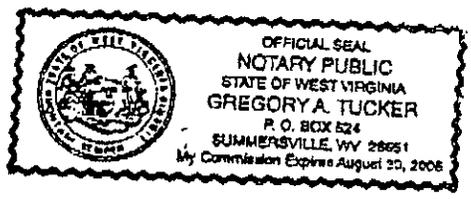
~~Approved as to form the \_\_\_\_\_  
day of \_\_\_\_\_, 1996~~

~~BY: \_\_\_\_\_  
Attorney General~~

STATE OF West Virginia,  
COUNTY OF Nichols, to wit:

The foregoing instrument was acknowledged before me this the  
6<sup>th</sup> day of March, 1996, by Sam Steven Colose,  
as Mayor of CITY OF SUMMERSVILLE, a  
municipal corporation.

My commission expires: 8/30/2005

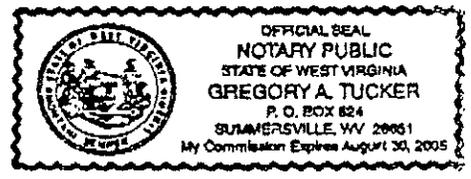


*[Signature]*  
Notary Public

STATE OF West Virginia,  
COUNTY OF Nichols, to wit:

The foregoing instrument was acknowledged before me this the  
6<sup>th</sup> day of March, 1996, by Arden Goyless  
as Chairman of CRAIGSVILLE PUBLIC SERVICE  
DISTRICT, a West Virginia Public Service District.

My commission expires: 8/30/2005



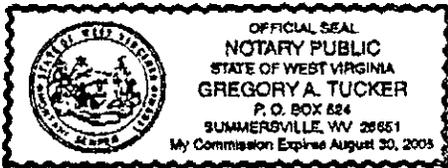
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[Signature]  
Notary Public

STATE OF West Virginia,  
COUNTY OF Nicholas, to wit:

The foregoing instrument was acknowledged before me this the  
16th day of March, 1996, by Spurgeon Hinkle  
as President of the COUNTY COMMISSION OF  
NICHOLAS COUNTY, WEST VIRGINIA, a statutory corporation!

My commission expires: 8/30/2005



[Signature]  
Notary Public

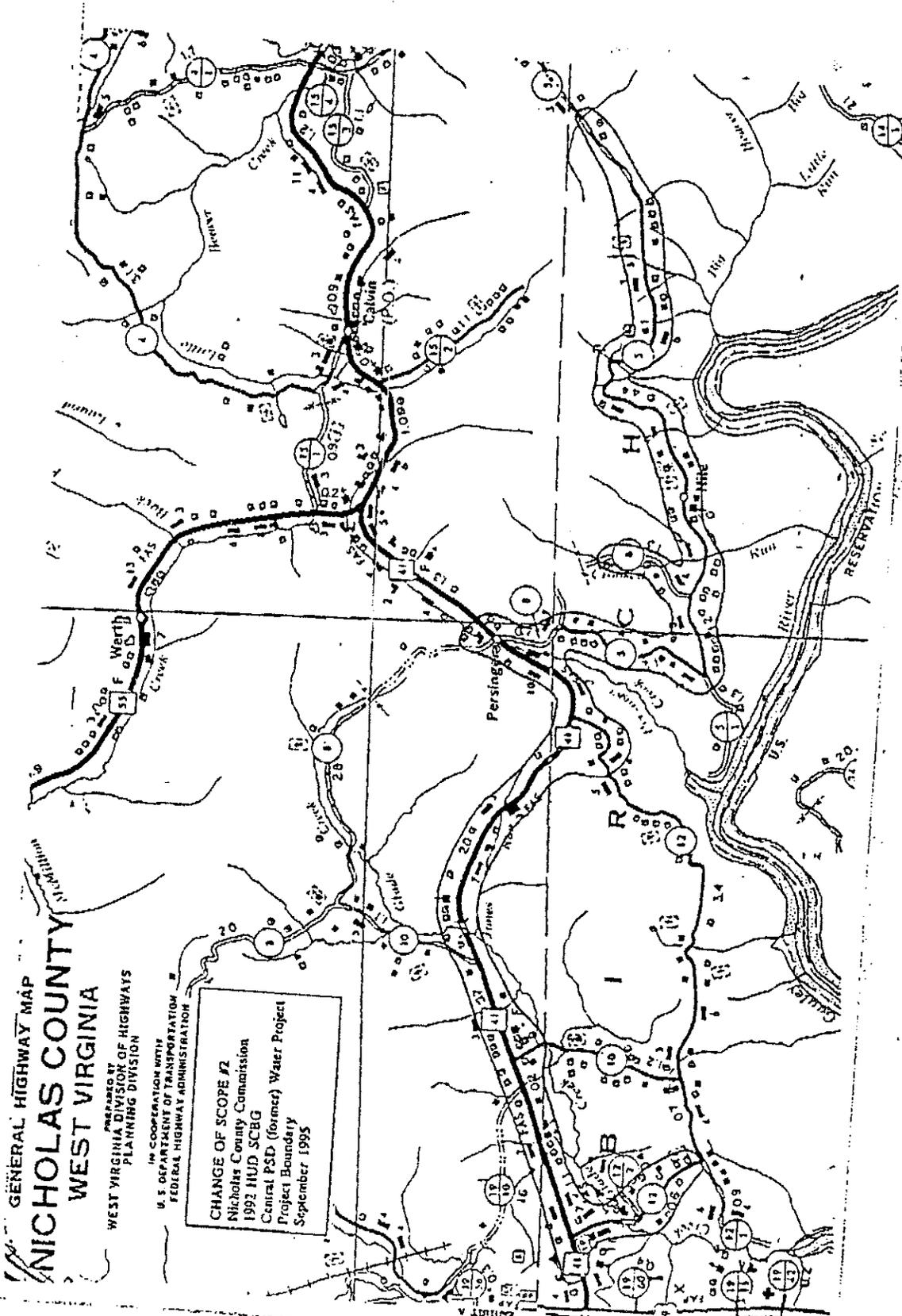
STATE OF \_\_\_\_\_,  
COUNTY OF \_\_\_\_\_, to wit:

The foregoing instrument was acknowledged before me this the  
\_\_\_\_\_ day of \_\_\_\_\_, 199\_\_\_\_, by the Attorney  
General of the State of West Virginia.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

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**GENERAL HIGHWAY MAP**  
**NICHOLAS COUNTY**  
**WEST VIRGINIA**

PREPARED BY  
 WEST VIRGINIA DIVISION OF HIGHWAYS  
 PLANNING DIVISION

IN COOPERATION WITH  
 U.S. DEPARTMENT OF TRANSPORTATION  
 FEDERAL HIGHWAY ADMINISTRATION

**CHANGE OF SCOPE #2**  
 Nicholas County Commission  
 1992 HUD SCBG  
 Central PSD (former) Water Project  
 Project Boundary  
 September 1995